

## 2 Am. Jur. 2d Admiralty IV A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Admiralty

Jill Gustafson, J.D.


IV. Admiralty Practice and Procedure

A. In General

[Topic Summary](#) | [Correlation Table](#)

### Research References

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  1.20(4), 26

#### A.L.R. Library

A.L.R. Index, Admiralty

West's A.L.R. Digest, [Admiralty](#)  1.20(4), 26

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## 2 Am. Jur. 2d Admiralty § 115

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### Admiralty

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#### IV. Admiralty Practice and Procedure

##### A. In General

### § 115. Unification of rules of procedure

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  26, 35

The Supplemental Rules for Admiralty or Maritime Claims apply to procedure for admiralty and maritime claims,<sup>1</sup> and the Federal Rules of Civil Procedure are specifically incorporated into the Supplemental Rules for Admiralty or Maritime Claims except to the extent that they are inconsistent therewith.<sup>2</sup> As a result of the unification of admiralty and other civil actions, a district court judge, in considering admiralty claims, may apply all statutory powers, whether deriving from law, equity, or admiralty.<sup>3</sup>

The Federal Rules of Civil Procedure do not, however, apply to prize proceedings in admiralty, which are governed by another federal statute.<sup>4</sup>

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#### Footnotes

- <sup>1</sup> Supplemental Admiralty and Maritime Claims Rule A(1).
- <sup>2</sup> Supplemental Admiralty and Maritime Claims Rule A(2).
- <sup>3</sup> [Lewis v. S. S. Baune, 534 F.2d 1115 \(5th Cir. 1976\)](#).
- <sup>4</sup> [Fed. R. Civ. P. 81\(a\)](#).

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## 2 Am. Jur. 2d Admiralty § 116

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##### A. In General

## § 116. Supplemental admiralty rules

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  26

The Supplemental Rules for Admiralty or Maritime Claims apply to admiralty and maritime claims with respect to maritime attachment and garnishment; actions in rem; possessory, petitory, and partition actions; and actions for exoneration from, or limitation of, liability.<sup>1</sup> The supplemental admiralty rules also apply to forfeiture actions in rem arising from a federal statute<sup>2</sup> and statutory condemnation proceedings analogous to maritime actions in rem, whether or not within the admiralty and maritime jurisdiction, and references in the supplemental rules to actions in rem include such analogous statutory condemnation proceedings except as otherwise provided.<sup>3</sup> Where a conflict exists between the supplemental admiralty rules and the Federal Rules of Civil Procedure, the supplemental rules will control.<sup>4</sup>

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#### Footnotes

- [1](#) Supplemental Admiralty and Maritime Claims Rule A(1)(A).
- [2](#) Supplemental Admiralty and Maritime Claims Rule A(1)(B).
- [3](#) Supplemental Admiralty and Maritime Claims Rule A(1)(C).
- [4](#) [§ 115](#).

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## 2 Am. Jur. 2d Admiralty § 117

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##### A. In General

### § 117. Applicability of state court procedure

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  1.20(4), 26

Generally, state court procedure is not applicable in admiralty proceedings before federal courts.<sup>1</sup> This is true even where admiralty enforces a state statute as in a wrongful-death action under a state statute.<sup>2</sup> However, in providing means to enforce obligations cognizable in admiralty, Congress may draw on other systems by providing modes of procedure followed in courts of law, or remedies of an equitable character, such as by permitting trial by jury, injunctive relief, or specific performance.<sup>3</sup>

When a state court hears an admiralty case, that court occupies essentially the same position occupied by a federal court sitting in diversity, and thus, the state court must apply substantive federal maritime law but follow state procedure.<sup>4</sup>

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#### Footnotes

- <sup>1</sup> [Laidlaw v. Oregon Ry. & Nav. Co.](#), 81 F. 876 (C.C.A. 9th Cir. 1897).
- <sup>2</sup> [The J. E. Rumbell](#), 148 U.S. 1, 13 S. Ct. 498, 37 L. Ed. 345 (1893).  
As to when state substantive law may be applied in admiralty, see [§ 91](#).
- <sup>3</sup> [Marine Transit Corporation v. Dreyfus](#), 284 U.S. 263, 52 S. Ct. 166, 76 L. Ed. 282 (1932); [The Genesee Chief](#), 53 U.S. 443, 12 How. 443, 13 L. Ed. 1058, 1851 WL 6623 (1851).
- <sup>4</sup> [In re Omega Protein, Inc.](#), 288 S.W.3d 17 (Tex. App. Houston 1st Dist. 2009).

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## 2 Am. Jur. 2d Admiralty IV B Refs.

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### Admiralty

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##### B. Process and Pleading

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## Research References

### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  5(1), 40 to 61, 65 to 67, 69, 70, 72, 79 to 82, 102 to 119, 121 to 127


West's Key Number Digest, [Interest](#)  39(2.25)

### A.L.R. Library

A.L.R. Index, Admiralty

A.L.R. Index, Attachment and Garnishment

West's A.L.R. Digest, [Admiralty](#)  5(1), 40 to 61, 65 to 67, 69, 70, 72, 79 to 82, 102 to 119, 121 to 127

West's A.L.R. Digest, [Interest](#)  39(2.25)

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## 2 Am. Jur. 2d Admiralty § 118

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### Admiralty

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#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading

##### 1. Identification of Admiralty Claims

### § 118. Identification of actions as civil or admiralty

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#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  59, 60

#### Forms

Forms relating to allegations, generally, see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure [[Westlaw® Search Query](#)]

If there are two grounds for jurisdiction in the same case, such as admiralty and diversity jurisdiction, a plaintiff may elect to proceed in admiralty.<sup>1</sup> If a claim for relief is within the admiralty or maritime jurisdiction and also within the court's subject-matter jurisdiction on some other ground, the pleading may designate the claim as an admiralty or maritime claim for the purposes of certain procedural rules,<sup>2</sup> as well as the Supplemental Rules for Admiralty or Maritime Claims.<sup>3</sup> A claim cognizable only in the admiralty or maritime jurisdiction is an admiralty or maritime claim for those purposes, whether or not so designated.<sup>4</sup> The election is purely procedural, permitting a plaintiff whose claim is cognizable under either law or admiralty jurisdiction to identify the claim as an admiralty claim to obtain certain procedural benefits traditionally available under admiralty jurisdiction; the election does not authorize a plaintiff to choose the applicable substantive law.<sup>5</sup>

If the claim is cognizable both at law and in admiralty, a statement identifying a complaint as an admiralty or maritime claim under the applicable Federal Rule of Civil Procedure is sufficient to invoke the special admiralty procedures and remedies.<sup>6</sup> Specific reference to the particular rule of federal civil procedure under which the election is made is not necessary

as long as the election is clearly made otherwise.<sup>7</sup> Absent any statement that the matter be treated as in admiralty, a party's jury demand may be deemed to indicate an election not to have the matter treated as an admiralty case<sup>8</sup> since there is no constitutional right to a jury in admiralty.<sup>9</sup>

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Footnotes

- 1 [St. Paul Fire and Marine Ins. Co. v. Lago Canyon, Inc.](#), 561 F.3d 1181, 72 Fed. R. Serv. 3d 1260 (11th Cir. 2009).
- 2 [Fed. R. Civ. P. 14\(c\)](#), 38(e), 82.
- 3 [Fed. R. Civ. P. 9\(h\)](#).
- 4 [Fed. R. Civ. P. 9\(h\)](#).
- 5 [Carey v. Bahama Cruise Lines](#), 864 F.2d 201, 12 Fed. R. Serv. 3d 1366 (1st Cir. 1988).
- 6 [Bodden v. Osgood](#), 879 F.2d 184, 14 Fed. R. Serv. 3d 1083 (5th Cir. 1989).  
Setting forth the General Maritime Laws of the United States as a basis for jurisdiction, in addition to identifying a claim as one in admiralty in the complaint's header, indicates an election to proceed in admiralty even where the plaintiff also alleges diversity of citizenship. [Styron v. Norfolk Dredging Co.](#), 262 F.R.D. 502 (E.D. N.C. 2009).
- 7 [Teal v. Eagle Fleet, Inc.](#), 933 F.2d 341, 19 Fed. R. Serv. 3d 1462 (5th Cir. 1991).
- 8 [Duhon v. Koch Exploration Co.](#), 628 F. Supp. 925, 4 Fed. R. Serv. 3d 661 (W.D. La. 1986); [Matter of Armatur, S.A.](#), 710 F. Supp. 404 (D.P.R. 1989).
- 9 § 187.

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## 2 Am. Jur. 2d Admiralty § 119

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### Admiralty

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#### IV. Admiralty Practice and Procedure


##### B. Process and Pleading

###### 1. Identification of Admiralty Claims

### § 119. Identification of actions as civil or admiralty—Revocation of election

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  66, 72

Identification of a claim as an admiralty or maritime claim is not an irrevocable election;<sup>1</sup> the amendment of a pleading to add or withdraw an identifying statement is subject to the principles of [Fed. R. Civ. P. 15](#).<sup>2</sup> Provided that there is no prejudice to the court or to the defendants, a plaintiff should be permitted to amend the complaint to change the election to proceed in admiralty.<sup>3</sup> Regardless of good or bad faith, conversion to admiralty may be denied where it would deprive a third party of the right to a jury trial.<sup>4</sup>

A defendant, by entering into a stipulation agreeing to allow the plaintiff to amend a complaint to include a statement that the claim for relief is an admiralty claim, does not thereby waive the right to object to the court's jurisdiction in admiralty.<sup>5</sup>

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#### Footnotes

- <sup>1</sup> Notes of Advisory Committee on 1966 Amendments to [Fed. R. Civ. P. 9\(h\)](#).
- <sup>2</sup> Notes of Advisory Committee on 1966 Amendments to [Fed. R. Civ. P. 9\(h\)](#).  
As to amending and supplementing a federal pleading, generally, see [Am. Jur. 2d, Pleading §§ 668 to 685, 698 to 707](#).
- <sup>3</sup> [Luera v. M/V Alberta](#), 635 F.3d 181 (5th Cir. 2011).
- <sup>4</sup> [Banks v. Hanover S. S. Corp.](#), 43 F.R.D. 374, 11 Fed. R. Serv. 2d 202 (D. Md. 1967).  
As to the right to jury trial in admiralty actions, generally, see [§ 187](#).
- <sup>5</sup> [Di Paola v. International Terminal Operating Co.](#), 294 F. Supp. 736 (S.D. N.Y. 1968).



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## 2 Am. Jur. 2d Admiralty § 120

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#### IV. Admiralty Practice and Procedure


##### B. Process and Pleading

###### 1. Identification of Admiralty Claims

### § 120. Identification of actions as civil or admiralty— Revocation by means other than amended statement

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  59, 66

While an amendment of pleadings other than the addition or deletion of an identifying statement may manifest the intent to alter the election of a civil or admiralty cause of action, the amendment of pleadings to assert diversity as an additional jurisdictional ground is insufficient to constitute the withdrawal of a designation of a claim as an admiralty claim.<sup>1</sup> Even where a plaintiff repeatedly asserts the right to a jury trial, it will not be deemed an implied withdrawal of an admiralty designation where the plaintiff refuses to amend the complaint to explicitly withdraw the designation.<sup>2</sup> On the other hand, a plaintiff's withdrawal of a demand for a jury trial will be sufficient to constitute an election to proceed in admiralty where the action is brought under the Jones Act<sup>3</sup> since the concurrent remedies of that Act make the waiver of a jury trial tantamount to an election to proceed in admiralty.<sup>4</sup>

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#### Footnotes

- <sup>1</sup> [Romero v. Bethlehem Steel Corp.](#), 515 F.2d 1249, 20 Fed. R. Serv. 2d 562 (5th Cir. 1975).
- <sup>2</sup> [Romero v. Bethlehem Steel Corp.](#), 515 F.2d 1249, 20 Fed. R. Serv. 2d 562 (5th Cir. 1975).
- <sup>3</sup> [46 U.S.C.A. § 30104](#).  
As to the Jones Act, generally, see [Am. Jur. 2d, Federal Employers' Liability and Compensation Acts §§ 29 to 34](#).
- <sup>4</sup> [Doucet v. Wheless Drilling Co.](#), 467 F.2d 336 (5th Cir. 1972).

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## 2 Am. Jur. 2d Admiralty § 121

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##### B. Process and Pleading

##### 2. Complaints

### § 121. Generally

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#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  [59](#), [60](#)

#### Forms

Forms relating to tort actions: see Am. Jur. Pleading and Practice Forms, Admiralty[\[Westlaw® Search Query\]](#)

Forms relating to contract actions, generally, see Am. Jur. Pleading and Practice Forms, Admiralty[\[Westlaw® Search Query\]](#)

Forms relating to complaints, petitions, and answers, generally, see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure[\[Westlaw® Search Query\]](#)

While a plaintiff must affirmatively insert statements in the pleadings identifying the claim as admiralty or maritime,<sup>1</sup> direct reference need not be made to the applicable rule<sup>2</sup> though such a reference is preferred.<sup>3</sup>

In addition, a complaint in an in personam action utilizing maritime attachment and garnishment, an in rem action, or a petitory, possessory, or partition action must state the circumstances from which the claim arises with such particularity that the defendant or claimant will be able, without moving for a more definite statement, to commence an investigation of the facts and frame a responsive pleading.<sup>4</sup>

Ultimately, the decision whether the pleading sufficiently identifies admiralty jurisdiction will involve an evaluation of the totality of the circumstances; one important factor in this respect is whether a jury demand has been made in that the inclusion of such a demand reflects how the plaintiff elects to proceed at law.<sup>5</sup>

In interpreting the Supplemental Rules for Admiralty or Maritime Claims, the construction placed upon particular similar rules of the Federal Rules of Civil Procedure is followed in determining if a complaint is adequate.<sup>6</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

In cases that fall exclusively under admiralty jurisdiction, the plaintiff need not make an explicit statement invoking admiralty jurisdiction. [Fed. R. Civ. P. 9\(h\)](#). [Ortega Garcia v. United States](#), 427 F. Supp. 3d 882 (S.D. Tex. 2019).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [Fedorczyk v. Caribbean Cruise Lines, Ltd.](#), 82 F.3d 69 (3d Cir. 1996).
- 2 [Fouk v. Donjon Marine Co., Inc.](#), 144 F.3d 252, 40 Fed. R. Serv. 3d 980 (3d Cir. 1998) (referring to [Fed. R. Civ. P. 9\(h\)](#)).
- 3 [Wingerter v. Chester Quarry Co.](#), 185 F.3d 657, 44 Fed. R. Serv. 3d 359 (7th Cir. 1998).
- 4 Supplemental Admiralty and Maritime Claims Rule E(2)(a).
- 5 [Wingerter v. Chester Quarry Co.](#), 185 F.3d 657, 44 Fed. R. Serv. 3d 359 (7th Cir. 1998).  
As to jury demands, generally, see § 187.
- 6 [Riverway Co. v. Spivey Marine and Harbor Service Co.](#), 598 F. Supp. 909 (S.D. Ill. 1984).

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### IV. Admiralty Practice and Procedure

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##### 2. Complaints

## § 122. Additional content of in rem complaint

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### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  65

### Forms

Forms relating to in rem, generally, see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure[[Westlaw® Search Query](#)]

Ordinary notice pleading does not satisfy the stringencies of the rules governing the commencement and pleading of in rem admiralty actions.<sup>1</sup>

An in rem complaint must describe the property that is the subject of the action with reasonable particularity and must state that the property is within the district or will be during the pendency of the action.<sup>2</sup> This requirement reflects the fact that in rem jurisdiction only exists where the subject matter of the action or an appropriate substitute for it is within the territorial jurisdiction of the court.<sup>3</sup> The requirement that the plaintiff state that the property will be within the jurisdiction of the court during the pendency of the proceeding does not contemplate the vessel being brought within the jurisdiction of the court under the compulsion of court process issued to owners who are not subject to the court's jurisdiction.<sup>4</sup>

In addition, since such a complaint is available to enforce a maritime lien,<sup>5</sup> the maritime lien must be specifically and accurately alleged so that a warrant for the arrest of the vessel may issue.<sup>6</sup>

In an in rem forfeiture proceeding for the violation of a federal statute, the complaint must:

- (1) state the grounds for subject-matter jurisdiction, in rem jurisdiction over the defendant property, and venue;
- (2) describe the property with reasonable particularity;
- (3) if the property is tangible, state its location when any seizure occurred and—if different—its location when the action is filed;
- (4) identify the statute under which the forfeiture action is brought; and
- (5) state sufficiently detailed facts to support a reasonable belief that the government will be able to meet its burden of proof at trial.<sup>7</sup>

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Footnotes

- 1 [Puerto Rico Ports Authority v. BARGE KATY-B](#), 427 F.3d 93 (1st Cir. 2005).
- 2 Supplemental Admiralty and Maritime Claims Rule C(2)(b), (c).
- 3 [Mackensworth v. S.S. American Merchant](#), 28 F.3d 246, 29 Fed. R. Serv. 3d 487 (2d Cir. 1994); [American Bank of Wage Claims v. Registry of Dist. Court of Guam](#), 431 F.2d 1215 (9th Cir. 1970) (abrogated on other grounds by, [Ventura Packers, Inc. v. F/V JEANINE KATHLEEN](#), 424 F.3d 852 (9th Cir. 2005)).  
As to the jurisdictional requirement, generally, see § 29.
- 4 [Thyssen Steel Corp. v. Federal Commerce & Nav. Co.](#), 274 F. Supp. 18 (S.D. N.Y. 1967).
- 5 Supplemental Admiralty and Maritime Claims Rule C(1)(a).
- 6 [GEA Power Cooling Systems, Inc. v. M/V Nurnberg Atlantic](#), 748 F. Supp. 303 (E.D. Pa. 1990).  
As to the issuance of a warrant of arrest, see §§ 126 to 128.
- 7 Supplemental Admiralty and Maritime Claims Rule G(2)(b) to (f).

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## 2 Am. Jur. 2d Admiralty § 123

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### IV. Admiralty Practice and Procedure

#### B. Process and Pleading

##### 2. Complaints

## § 123. Verification

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### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  67

### Forms

Forms relating to verification, generally, see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure[[Westlaw® Search Query](#)]

In an in rem action, the complaint must be verified.<sup>1</sup> The failure to properly file a verified complaint deprives the district court of jurisdiction over the res,<sup>2</sup> and the court is thereby without jurisdiction to enter a default judgment; in such a case, the court will dismiss the complaint without prejudice.<sup>3</sup> A plaintiff is not entitled to conform the complaint to the evidence so as to cure a failure to verify where merely conforming the complaint will not cure the verification deficiency.<sup>4</sup>

In an in personam action, the complaint must be verified if the plaintiff intends to proceed by maritime attachment and garnishment.<sup>5</sup>

Verification by one of several plaintiffs is sufficient.<sup>6</sup>



Footnotes

- 1 Supplemental Admiralty and Maritime Claims Rule C(2)(a); Supplemental Admiralty and Maritime Claims Rule G(2)(a).
- 2 [Madeja v. Olympic Packers, LLC., 310 F.3d 628 \(9th Cir. 2002\).](#)
- 3 [U.S. v. \\$84,740.00 U.S. Currency, 900 F.2d 1402 \(9th Cir. 1990\).](#)
- 4 [Madeja v. Olympic Packers, LLC., 310 F.3d 628 \(9th Cir. 2002\)](#) (in light of the complaint's complete absence of wage verification, merely conforming the complaint would not have cured the verification deficiency).
- 5 Supplemental Admiralty and Maritime Claims Rule B(1)(a).
- 6 [Hanson v. U.S., 4 F.2d 745 \(E.D. N.Y. 1925\).](#)

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## 2 Am. Jur. 2d Admiralty § 124

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### IV. Admiralty Practice and Procedure

#### B. Process and Pleading

##### 2. Complaints

## § 124. Service of interrogatories with complaint

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  69

### Forms

Forms relating to interrogatories, generally, see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure [\[Westlaw® Search Query\]](#)

Interrogatories to a garnishee in an in personam action with maritime attachment and garnishment may be served with the complaint without leave of court.<sup>1</sup>

In an in rem action, interrogatories may also be served with the complaint without leave of court, and any answers thereto must be filed with the answer to the complaint.<sup>2</sup>

In an in rem forfeiture proceeding for the violation of a federal statute, the government may serve special interrogatories limited to the claimant's identity and relationship to the defendant property without the court's leave at any time after the claim is filed and before discovery is closed; however, if the claimant serves a motion to dismiss the action, the government must serve the interrogatories within 21 days after the motion is served.<sup>3</sup> Answers or objections to these interrogatories must be served within 21 days after the interrogatories are served.<sup>4</sup> The government need not respond to a claimant's motion to dismiss the action until 21 days after the claimant has answered these interrogatories.<sup>5</sup>

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Footnotes

- [1](#) Supplemental Admiralty and Maritime Claims Rule B(3)(a).
- [2](#) Supplemental Admiralty and Maritime Claims Rule C(6)(b).
- [3](#) Supplemental Admiralty and Maritime Claims Rule G(6)(a).
- [4](#) Supplemental Admiralty and Maritime Claims Rule G(6)(b).
- [5](#) Supplemental Admiralty and Maritime Claims Rule G(6)(c).

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## 2 Am. Jur. 2d Admiralty § 125

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### Admiralty

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#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading


##### 3. Admiralty Process

###### a. In General

### § 125. Acquiring jurisdiction in personam

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  [44](#), [46](#)

In an admiralty proceeding in personam, the court's jurisdiction in the particular case may be acquired by service of process within the territorial ambit of the court's jurisdiction.<sup>1</sup> Jurisdiction may also be acquired by the voluntary appearance of the party on whom process would otherwise have to be served<sup>2</sup> or by attachment, within the territorial ambit of the court's jurisdiction, of property of the party.<sup>3</sup>

A foreign corporation may be sued for an admiralty tort in any district court of the United States where it has property that might be subjected to foreign attachment.<sup>4</sup>

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#### Footnotes

- <sup>1</sup> [Internatio-Rotterdam, Inc. v. Thomsen](#), 218 F.2d 514 (4th Cir. 1955).  
As to the territorial limits of process, see § 129.
- <sup>2</sup> [Cooper v. Reynolds](#), 77 U.S. 308, 19 L. Ed. 931, 1870 WL 12736 (1870).
- <sup>3</sup> [In re Louisville Underwriters](#), 134 U.S. 488, 10 S. Ct. 587, 33 L. Ed. 991 (1890); [In re Devoe Mfg. Co.](#), 108 U.S. 401, 2 S. Ct. 894, 27 L. Ed. 764 (1883).  
[Fed. R. Civ. P. 4](#) governs service of process in in personam attachment and garnishment admiralty actions. Supplemental Admiralty and Maritime Claims Rule B(2)(a).  
As to in personam attachment or garnishment, see §§ [136](#) to [142](#).

4 [Aktieselskabet Dea v. Wrightson, 26 F.2d 175 \(C.C.A. 5th Cir. 1928\).](#)

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## 2 Am. Jur. 2d Admiralty § 126

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##### B. Process and Pleading

##### 3. Admiralty Process

##### a. In General

### § 126. Seizure of vessel, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#) , [47](#), [48\(1\)](#), [48\(2\)](#)

#### A.L.R. Library

[Methods other than arrest of vessel for obtaining in rem jurisdiction in admiralty](#), 95 A.L.R. Fed. 225

In an admiralty in personam action, a plaintiff may seize a vessel or other property by means of maritime attachment and garnishment.<sup>1</sup> In an in rem action, forfeiture or otherwise, such a seizure may be made by means of a warrant for arrest of the vessel or property.<sup>2</sup>

Attachment in an in personam action may be made after judicial review of the complaint and affidavit,<sup>3</sup> or in a case where exigent circumstances exist, without such review, provided that it is shown later by the plaintiff that the necessary circumstances existed.<sup>4</sup> In an in rem action, similar court review is required.<sup>5</sup>

The admiralty remedies of attachment and arrest are available in arbitrations under the Federal Arbitration Act.<sup>6</sup> However, these remedies may only be available in cases where the jurisdiction of the admiralty court is called into play and not in aid of state court arbitration.<sup>7</sup>

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Footnotes

- 1 [Supplemental Admiralty and Maritime Claims Rule B.](#)  
As to matters distinct to in personam attachment and garnishment, see §§ [136](#) to [142](#).
- 2 [Supplemental Admiralty and Maritime Claims Rule C, G.](#)  
As to in rem arrest, see §§ [143](#) to [146](#).
- 3 Supplemental Admiralty and Maritime Claims Rule B(1)(b).
- 4 Supplemental Admiralty and Maritime Claims Rule B(1)(c).
- 5 Supplemental Admiralty and Maritime Claims Rule C(3).
- 6 [9 U.S.C.A. § 8](#), discussed in § [14](#).
- 7 [Continental Chartering and Brokerage, Inc. v. T.J. Stevenson and Co., Inc.](#), 678 F. Supp. 58 (S.D. N.Y. 1987).  
As to the effect of an arbitration agreement on admiralty jurisdiction, generally, see § [13](#).

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## 2 Am. Jur. 2d Admiralty § 127

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### Admiralty

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#### IV. Admiralty Practice and Procedure

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### § 127. Constitutionality of arrest and attachment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  47, 48(1), 48(2)

#### A.L.R. Library

[Constitutionality of provision in Rule C, Supplemental Rules for Certain Admiralty and Maritime Claims, allowing in rem seizure of property, 64 A.L.R. Fed. 946](#)

With respect to in rem and in personam proceedings with process of maritime attachment and garnishment, the Supplemental Rules for Admiralty or Maritime Claims provide for the seizure of property without prior notice to the owner or the opportunity for a preseizure judicial hearing.<sup>1</sup>

The power to grant attachments in admiralty is an inherent component of the admiralty jurisdiction given to the federal courts under [Article III of the U.S. Constitution](#) which has a historical purpose of gaining jurisdiction over an absent defendant and assuring satisfaction of a judgment.<sup>2</sup>

Arrests without prior notice under the rule governing in rem actions are constitutional because the "exigent circumstances" exception<sup>3</sup> permits prenotice seizure where it is necessary to establish the court's jurisdiction over the res and to prevent that jurisdiction from being thwarted by removal or destruction of the res.<sup>4</sup>



## CUMULATIVE SUPPLEMENT

### Cases:

District court did not possess equitable powers under maritime law to grant security in aid of arbitration; although district courts had inherent admiralty powers, those powers were limited to those that existed at time Constitution was adopted, such as power to attach vessel to secure jurisdiction, granting security in aid of arbitration was different remedy from any historical concept of maritime attachment, and district court had to exercise its inherent admiralty powers consistent with Supplemental Rules which could not be used purely for purpose of obtaining security. [SCL Basilisk AG v. Agribusiness United Savannah Logistics LLC](#), 875 F.3d 609 (11th Cir. 2017).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [Supplemental Admiralty and Maritime Claims Rule B, C.](#)
- 2 [Vitol, S.A. v. Primerose Shipping Co. Ltd.](#), 708 F.3d 527 (4th Cir. 2013); [Milestone Shipping, S.A. v. Estech Trading LLC](#), 764 F. Supp. 2d 632 (S.D. N.Y. 2011).
- 3 Discussed in, see § 143.
- 4 [Amstar Corp. v. S/S ALEXANDROS T.](#), 664 F.2d 904 (4th Cir. 1981); [A/S Hjalmar Bjorges Rederi v. Tug Boat Condor](#), 1979 A.M.C. 1696 (S.D. Cal. 1979).

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### § 128. Constitutionality of arrest and attachment—Necessity for postseizure hearing

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#) , [47](#), [48\(1\)](#), [48\(2\)](#)

#### A.L.R. Library

[Constitutionality of provision in Rule C, Supplemental Rules for Certain Admiralty and Maritime Claims, allowing in rem seizure of property, 64 A.L.R. Fed. 946](#)

In order to satisfy due process in the absence of preseizure notice or hearing, the claimant must have the right to appear and have a full postseizure hearing regarding the validity of the seizure.<sup>1</sup> The Supplemental Rules for Admiralty or Maritime Claims provide for prompt notice<sup>2</sup> and a hearing<sup>3</sup> where the plaintiff is required to show why the arrest or attachment should not be vacated.<sup>4</sup>

The failure of a district court to hold an immediate postseizure hearing at the request of a person who establishes a right to defend against the arrest of a vessel is a denial of procedural due process.<sup>5</sup> However, an owner does not demonstrate that it was deprived of a postarrest hearing unless it produces evidence that the proceeding had was not in fact an appropriate hearing since the Rules do not specify what form the hearing must follow.<sup>6</sup>

Footnotes

- 1 Ewing v. Mytinger & Casselberry, 339 U.S. 594, 70 S. Ct. 870, 94 L. Ed. 1088 (1950).
- 2 §§ 147, 148.
- 3 § 160.
- 4 Sonito Shipping Co., Ltd. v. Sun United Maritime Ltd., 478 F. Supp. 2d 532 (S.D. N.Y. 2007).
- 5 Neapolitan Navigation, Ltd. v. Tracor Marine Inc., 777 F.2d 1427 (11th Cir. 1985).
- 6 Salazar v. Atlantic Sun, 881 F.2d 73 (3d Cir. 1989).

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##### a. In General

### § 129. Territorial limits of service

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, Admiralty  43 to 48(2), 69

In rem process and maritime attachment and garnishment process may be served only within the district.<sup>1</sup> Service of process "within the district" does not include statewide service of process.<sup>2</sup> In forfeiture cases, process in rem may be served within the district or outside the district when authorized by statute.<sup>3</sup>

In regard to other types of actions, the full scope of the Federal Rule of Civil Procedure governing service of process<sup>4</sup> applies to admiralty proceedings, extending the personal jurisdiction of the admiralty court to any defendant who is properly served under that Rule.<sup>5</sup> Thus, process in admiralty suits may run as far as process in suits generally, and a party will be within a court's jurisdiction for service of process where service may be accomplished by the methods authorized by the Federal Rules of Civil Procedure.<sup>6</sup>

Statewide service of ancillary process under the Supplemental Rules for Admiralty or Maritime Claims is permissible.<sup>7</sup>

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#### Footnotes

- <sup>1</sup> Supplemental Admiralty and Maritime Claims Rule E(3)(a).
- <sup>2</sup> [LaBanca v. Ostermunchner](#), 664 F.2d 65 (5th Cir. 1981).
- <sup>3</sup> Supplemental Admiralty and Maritime Claims Rule G(3)(c)(iii).

- 4                    Fed. R. Civ. P. 4.
- 5                    H & F Barge Co., Inc. v. Garber Bros., Inc., 65 F.R.D. 399, 20 Fed. R. Serv. 2d 286 (E.D. La. 1974).
- 6                    D/S A/S Flint v. Sabre Shipping Corp., 228 F. Supp. 384 (E.D. N.Y. 1964), judgment *aff'd*, 341 F.2d 50,  
12 A.L.R.3d 1081 (2d Cir. 1965).
- 7                    Treasure Salvors, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel, 459 F. Supp. 507, 26 Fed.  
R. Serv. 2d 121 (S.D. Fla. 1978), *aff'd*, 621 F.2d 1340 (5th Cir. 1980), *aff'd* in part, *rev'd* in part on other  
grounds, 458 U.S. 670, 102 S. Ct. 3304, 73 L. Ed. 2d 1057 (1982).  
As to the permissibility of ancillary process in an in rem action, see § 144.

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## 2 Am. Jur. 2d Admiralty § 130

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## § 130. Application of state long-arm statutes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  43 to 47, 69

### A.L.R. Library

[Validity of service of process on nonresident owner of watercraft, under state "long-arm" statutes, 99 A.L.R.2d 287](#)

Insofar as it authorizes extraterritorial suit pursuant to a state long-arm statute, the Federal Rules of Civil Procedure may be utilized in an in personam action in admiralty.<sup>1</sup> Where personal jurisdiction over a nonresident party to an admiralty action in federal court is obtained under the state's long-arm statute, pursuant to federal law, the federal court's exercise of personal jurisdiction over the nonresident does not offend due process<sup>2</sup> provided that the minimum contacts test is met.<sup>3</sup>

Since state long-arm statutes are seldom drafted with admiralty actions in mind, in determining whether jurisdiction exists, the state long-arm statute must be liberally construed, consistent with due process.<sup>4</sup>

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### Footnotes

- 1                    *Gavelek v. Coscol Petroleum Corp.*, 491 F. Supp. 188 (E.D. Mich. 1979); *W. G. Bush & Co., Inc. v. Sioux City and New Orleans Barge Lines, Inc.*, 474 F. Supp. 537 (M.D. Tenn. 1977); *Long v. Vessel Miss Ida Ann*, 490 F. Supp. 210 (S.D. Tex. 1980).
- When a federal court's admiralty jurisdiction is invoked, the law of the state in which the court sits determines the defendant's amenability to suit in the forum. *Atalanta Corp. v. Polskie Linie Oceaniczne*, 683 F. Supp. 347 (S.D. N.Y. 1988); *Philipp Bros. (Cocoa), Inc. v. M/V Ocea*, 144 F.R.D. 312, 24 Fed. R. Serv. 3d 1468 (E.D. Va. 1992).
- 2                    *New York Marine Managers, Inc. v. M.V. Topor-1*, 716 F. Supp. 783 (S.D. N.Y. 1989).
- 3                    § 131.
- 4                    *Ingersoll Mill. Mach. Co. v. J. E. Bernard & Co.*, 508 F. Supp. 907 (N.D. Ill. 1981); *Gipromer v. SS Tempo*, 487 F. Supp. 631 (S.D. N.Y. 1980).

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### § 131. Application of state long-arm statutes—When minimum contacts are required

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  5(1), 47, 69

In admiralty, as in civil law, nonresidents must have sufficient minimum contacts with the district to satisfy due process before they are amenable to service there, and again as in civil law, the necessary extent of these contacts varies between a single contact and a history of doing business in the state, depending upon the degree to which the contacts relate to the actual cause of action.<sup>1</sup> Personal jurisdiction over a manufacturer of vessels will not be constitutionally permissible merely because such vessels happened to dock in the jurisdiction after being placed in the stream of commerce.<sup>2</sup>

Where an in rem proceeding is brought against the vessel itself, the presence of a vessel within a district is sufficient to confer jurisdiction without regard to whether the vessel's owner has sufficient minimum contacts with the district to support in personam jurisdiction over the owner.<sup>3</sup> With respect to maritime attachment cases, some courts find that minimum contacts are irrelevant in maritime attachment cases<sup>4</sup> while other courts disagree and find minimum contacts necessary.<sup>5</sup>

The basis upon which such contacts are assessed may be different in admiralty from the basis used in civil law since some courts have concluded that the proper focus of inquiry is not the defendant's contacts with the state in which the admiralty court sits but his or her contacts with the United States as a whole.<sup>6</sup> On the other hand, where process is in personam rather than in rem, some courts reject the national contacts test since such service is based upon state long-arm practice.<sup>7</sup>

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Footnotes

- 1 [Scott v. Middle East Airlines Co., S. A., 240 F. Supp. 1 \(S.D. N.Y. 1965\).](#)  
The owner of a cargo ship did not have continuous and systematic contacts with the United States so as to satisfy the "minimum contacts" component of the due process inquiry into whether a federal court had general jurisdiction over the owner under the federal procedural rule allowing personal jurisdiction to be exercised over foreign defendants for claims arising under federal law based on contacts with the nation as a whole rather than any particular state, where the ship's American port visits were not made at the owner's direction but were instead made by the ship's charterers, and a hull inspection in Maryland was an isolated incident. [Porina v. Marward Shipping Co., Ltd., 521 F.3d 122 \(2d Cir. 2008\).](#)
- 2 [Federal Ins. Co. v. Lake Shore Inc., 886 F.2d 654 \(4th Cir. 1989\).](#)
- 3 [Merchants Nat. Bank of Mobile v. Dredge General G. L. Gillespie, 663 F.2d 1338, 64 A.L.R. Fed. 921 \(5th Cir. 1981\).](#)
- 4 [Florens Container v. Cho Yang Shipping, 245 F. Supp. 2d 1086 \(N.D. Cal. 2002\); Grand Bahama Petroleum Co., Ltd. v. Canadian Transp. Agencies, Ltd., 450 F. Supp. 447, 25 Fed. R. Serv. 2d 269 \(W.D. Wash. 1978\).](#)
- 5 [Engineering Equipment Co. v. S.S. Selene, 446 F. Supp. 706 \(S.D. N.Y. 1978\).](#)
- 6 [Engineering Equipment Co. v. S.S. Selene, 446 F. Supp. 706 \(S.D. N.Y. 1978\).](#)
- 7 [Merrill v. Zapata Gulf Marine Corp., 667 F. Supp. 37 \(D. Me. 1987\) \(applying the Maine long-arm statute\); DeJames v. Magnificence Carriers, Inc., 491 F. Supp. 1276 \(D.N.J. 1980\), order aff'd, 654 F.2d 280, 31 Fed. R. Serv. 2d 1399 \(3d Cir. 1981\); Atalanta Corp. v. Polskie Linie Oceaniczne, 683 F. Supp. 347 \(S.D. N.Y. 1988\).](#)

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##### a. In General

### § 132. Prepayment of costs or security

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  [52](#) to [56](#), [58](#)

Costs in admiralty will be assessed in accordance with the Federal Rules of Civil Procedure and applicable statutes.<sup>1</sup> The provisions of some statutes are expressly made applicable to admiralty proceedings;<sup>2</sup> thus, a court may tax as costs fees for services in the keeping of property which has been attached.<sup>3</sup> However, there is disagreement over whether seamen, who under statute may institute wage, salvage, health, or safety suits without prepayment of fees or costs,<sup>4</sup> are required to pay this deposit. While there is authority that they are specifically exempted by statute and may obtain arrest of a vessel without prepayment of fees and costs,<sup>5</sup> many courts have found that another statute<sup>6</sup> is controlling and requires seamen to make prepayment of expenses before a marshal can execute process.<sup>7</sup>

The court may require the plaintiff, defendant, claimant, or other party to give security, or additional security, in such sum as the court directs to pay all costs and expenses that are awarded against the party by any interlocutory order or by the final judgment or on appeal by any appellate court.<sup>8</sup>

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#### Footnotes

- <sup>1</sup> Supplemental Admiralty and Maritime Claims Rule E(2)(b), awarding costs in accordance with [Fed. R. Civ. P. 54\(d\)](#).  
As to the award and taxation of costs, generally, see [Am. Jur. 2d, Costs §§ 1 et seq.](#)

- 2 Supplemental Admiralty and Maritime Claims Rule E(4)(e), making applicable U.S. marshal's fees under  
28 U.S.C.A. § 1921 relative to the expenses of seizing and keeping property attached or arrested and to the  
requirement of deposits to cover such expenses.
- 3 28 U.S.C.A. § 1921(a)(1)(E).
- 4 28 U.S.C.A. § 1916, discussed further in §§ 196 to 198.
- 5 Thielebeule v. M/S Nordsee Pilot, 452 F.2d 1230 (2d Cir. 1971).
- 6 28 U.S.C.A. § 1921.
- 7 Puerto Rico Drydock and Marine Terminals, Inc. v. Motor Vessel Luisa Del Caribe, 746 F.2d 93 (1st Cir.  
1984); Dluhos v. Floating and Abandoned Vessel, Known as New York, 162 F.3d 63, 42 Fed. R. Serv. 3d  
13 (2d Cir. 1998); Araya v. McLelland, 525 F.2d 1194 (5th Cir. 1976); Setera v. F/V Olympic, Official No.  
516728, 491 F. Supp. 844 (W.D. Wash. 1980).
- 8 Supplemental Admiralty and Maritime Claims Rule E(2)(b).  
As to giving security in order to obtain release of the res, see §§ 155 to 159.

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##### a. In General

### § 133. Execution of process; in rem or maritime attachment and garnishment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  44 to 48(2), 53, 69

#### Forms

Forms relating to arrest, generally, see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure[[Westlaw® Search Query](#)]

A plaintiff may request that issuance and delivery of in rem process or maritime attachment and garnishment process be held in abeyance.<sup>1</sup> Otherwise, the marshal will execute process and make due and prompt return, in the case of in rem process, upon issuance and delivery of the process or, in the case of summons with process of attachment and garnishment, when it appears that the defendant cannot be found within the district.<sup>2</sup>

If the property is a vessel or tangible property on board a vessel, the summons, process, and any supplemental process must be delivered to the marshal for service.<sup>3</sup> If the property is other tangible or intangible property, the summons, process, and any supplemental process must be delivered to a person or organization authorized to serve it, who may be:<sup>4</sup>

- a marshal

- someone under contract with the United States
- someone specially appointed by the court for that purpose
- in an action brought by the United States, any officer or employee of the United States

The marshal will take tangible property into possession for safe custody unless the character or situation of the property is such that taking actual possession is impracticable, in which case the marshal will execute process by affixing a copy of the process to the property and leaving a copy of the complaint and process with the person having possession or his or her agent. The marshal may also make written request to the collector of customs that a vessel in the marshal's custody not be granted customs clearance until the collector of customs is notified that the vessel has been released.<sup>5</sup>

With respect to intangible property, the marshal must execute process by leaving the complaint with the garnishee or other obligor and requiring such person to answer, as provided by the supplemental admiralty rules,<sup>6</sup> or the marshal may accept the amount owed to the extent of the amount claimed by the plaintiff, plus interest and costs, in which event the garnishee or other obligor is not required to answer unless alias process is served.<sup>7</sup>

The marshal or other person or organization having the warrant may at any time apply to the court for directions with respect to property that has been attached or arrested and must give notice of such application to any or all of the parties as the court may direct.<sup>8</sup>

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#### Footnotes

- |   |   |
|---|---|
| 1 | Supplemental Admiralty and Maritime Claims Rule E(3)(b).  |
| 2 | Supplemental Admiralty and Maritime Claims Rule E(4)(a).<br>As to the presence of the defendant as defeating attachment, see § 139. |
| 3 | Supplemental Admiralty and Maritime Claims Rule B(1)(d)(i), C(3)(b)(i).   |
| 4 | Supplemental Admiralty and Maritime Claims Rule B(1)(d)(ii), C(3)(b)(ii).   |
| 5 | Supplemental Admiralty and Maritime Claims Rule E(4)(b).  |
| 6 | Supplemental Admiralty and Maritime Claims Rule B(3)(a), C(6).  |
| 7 | Supplemental Admiralty and Maritime Claims Rule E(4)(c).  |
| 8 | Supplemental Admiralty and Maritime Claims Rule E(4)(d).  |

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### IV. Admiralty Practice and Procedure

#### B. Process and Pleading

#### 3. Admiralty Process

##### a. In General

## § 134. Execution of process; forfeiture in rem process

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, Admiralty  43, 44, 48(1), 48(2), 53, 69

### Forms

Forms relating to arrest, generally, see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure[[Westlaw® Search Query](#)]

In an in rem forfeiture proceeding for the violation of a federal statute, the warrant and any supplemental process must be delivered to a person or organization authorized to execute it, such as a marshal or any other United States officer or employee, someone under contract with the United States, or someone specially appointed by the court for that purpose.<sup>1</sup>

The authorized person or organization must execute the warrant and any supplemental process on property in the United States as soon as practicable unless:<sup>2</sup>

- (1) the property is in the government's possession, custody, or control; or
- (2) the court orders a different time when the complaint is under seal, the action is stayed before the warrant and supplemental process are executed, or the court finds other good cause.

If executing a warrant on property outside the United States is required, the warrant may be transmitted to an appropriate authority for serving process where the property is located.<sup>3</sup>

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Footnotes

- [1](#) Supplemental Admiralty and Maritime Claims Rule G(3)(c)(i).
- [2](#) Supplemental Admiralty and Maritime Claims Rule G(3)(c)(ii).
- [3](#) Supplemental Admiralty and Maritime Claims Rule G(3)(c)(iv).  
As to the authority to serve process outside the district, see [§ 129](#).

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##### a. In General

## § 135. Preservation of property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  53

In an in rem action or maritime attachment and garnishment action, when the owner or another person remains in possession of property attached or arrested, under such provisions permitting execution of process without taking actual possession,<sup>1</sup> the court, on a party's motion or on its own, may enter any order necessary to preserve the property and to prevent its removal.<sup>2</sup>

In an in rem forfeiture proceeding for the violation of a federal statute, when the government does not have actual possession of the defendant property, the court, on motion or on its own, may enter any order necessary to preserve the property, to prevent its removal or encumbrance, or to prevent its use in a criminal offense.<sup>3</sup>

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#### Footnotes

- <sup>1</sup> [§ 133.](#)  
<sup>2</sup> Supplemental Admiralty and Maritime Claims Rule E(10).  
<sup>3</sup> Supplemental Admiralty and Maritime Claims Rule G(7)(a).

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##### B. Process and Pleading

##### 3. Admiralty Process

##### b. In Personam Attachment and Garnishment

### § 136. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  47

#### Forms

Forms relating to attachment and inability to find defendant in district, generally, see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure[[Westlaw® Search Query](#)]

Under the Supplemental Rules for Admiralty or Maritime Claims, if a defendant is not found within the district when a verified complaint praying for attachment and the affidavit are filed, a verified complaint may contain a prayer for process to attach the defendant's tangible or intangible personal property—up to the amount sued for—in the hands of garnishees named in the process.<sup>1</sup> A party may only seek maritime attachment if the underlying claim satisfies admiralty jurisdiction, and if an underlying dispute or claim does not fall within admiralty jurisdiction, the court lacks authority to issue the attachment.<sup>2</sup> Federal law defines the requirements necessary for satisfaction of the rule setting forth the process for maritime attachments, but federal courts look to the relevant state law to determine if those requirements are met.<sup>3</sup>

In addition, or in the alternative, the plaintiff may invoke the remedies provided by state law for attachment and garnishment or similar seizure of the defendant's property in accordance with the general Federal Rules of Civil Procedure.<sup>4</sup>

**Observation:**

Pursuant to the section of the Federal Arbitration Act governing proceedings begun by libel in admiralty, traditional admiralty procedure with its concomitant security should be available to the aggrieved party despite the fact that the parties agreed to arbitrate where the ability to pursue maritime attachment does not lessen a party's obligation to arbitrate its grievance.<sup>5</sup>

The plaintiff or the plaintiff's attorney must sign and file with the complaint an affidavit stating that, to the affiant's knowledge, or on information and belief, the defendant cannot be found within the district. The court must review the complaint and affidavit and, if the required conditions appear to exist, enter an order so stating and authorizing process of attachment and garnishment.<sup>6</sup> Supplemental process enforcing the court's order may be issued by the clerk upon application without further court order.<sup>7</sup> If the plaintiff or the plaintiff's attorney certifies that exigent circumstances make review by the court impracticable, the clerk must issue a summons and process of attachment and garnishment, and the plaintiff has the burden on a postattachment hearing to show that exigent circumstances existed.<sup>8</sup>

**Practice Tip:**

Maritime attachments are granted on the pleadings, and thus, the court of appeals assumes all allegations in the complaint to be true.<sup>9</sup>

## CUMULATIVE SUPPLEMENT

**Cases:**

Where a maritime plaintiff seeks to attach a debt held by a third-party garnishee, courts typically hold that the debt resides in the state or states in which the third-party garnishee is subject to personal jurisdiction, according to state law. [Harbor Pilots of NY NJ, LLC v. Bouchard Transportation Company, Inc.](#), 474 F. Supp. 3d 727 (D. Md. 2020).

## [END OF SUPPLEMENT]

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Footnotes

1 Supplemental Admiralty and Maritime Claims Rule B(1)(a).  
As to the requirement that the defendant cannot be found in the district, see § 139.  
2 [Williamson v. Recovery Ltd. Partnership](#), 542 F.3d 43 (2d Cir. 2008); [Alphamate Commodity GMBH v. CHS Europe SA](#), 627 F.3d 183 (5th Cir. 2010); [ProShipLine Inc. v. Aspen Infrastructures Ltd.](#), 609 F.3d 960 (9th Cir. 2010).  
As to conditions that must exist in order to prevent vacatur of attachment or garnishment, see § 142.  
3 [ProShipLine, Inc. v. Aspen Infrastructures, Ltd.](#), 585 F.3d 105 (2d Cir. 2009).  
As to state attachment law, see § 140.  
4 Supplemental Admiralty and Maritime Claims Rule B(1)(e), referring to [Fed. R. Civ. P. 64](#).  
5 [ProShipLine Inc. v. Aspen Infrastructures Ltd.](#), 609 F.3d 960 (9th Cir. 2010).  
As to the effect of an arbitration agreement, generally, see § 13.  
6 Supplemental Admiralty and Maritime Claims Rule B(1)(b).  
7 Supplemental Admiralty and Maritime Claims Rule B(1)(b).  
8 Supplemental Admiralty and Maritime Claims Rule B(1)(c).  
As to the rule applicable to a postattachment hearing, see § 160.  
9 [Transfield ER Cape Ltd. v. Industrial Carriers, Inc.](#), 571 F.3d 221 (2d Cir. 2009).

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## 2 Am. Jur. 2d Admiralty § 137

American Jurisprudence, Second Edition | May 2021 Update

### Admiralty

Jill Gustafson, J.D.

#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading

##### 3. Admiralty Process

##### b. In Personam Attachment and Garnishment

### § 137. Types of property that may be attached

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  47

Because a requirement of the admiralty rule governing attachment and garnishment is that the defendant is not found within the district,<sup>1</sup> the res is the only means by which a court can obtain jurisdiction over the defendant, and if the res is not the property of the defendant, then the court lacks jurisdiction.<sup>2</sup>

The property attached need not have a direct connection to the claim sued upon as the rule allowing for attachment is read broadly and is only limited to the amount sued for.<sup>3</sup> Further, where a court has personal jurisdiction over garnishee defendants, it also has jurisdiction over any indebtedness owed by the garnishee defendants to a principal defendant who is not subject to the court's personal jurisdiction, and thus, the indebtedness is consequently subject to garnishment pursuant to federal admiralty rules of procedure.<sup>4</sup>

#### Caution:

Electronic funds transfers between two banks outside of the United States that pass through a state electronically for an instant cannot be attached under the Supplemental Rules for Admiralty or Maritime Claims and therefore cannot be used to vest the district court with personal jurisdiction over the beneficiary or originator of the transaction.<sup>5</sup>

The existence of a foreign bank branch office within the district court's jurisdiction does not give the court jurisdiction over a charterer's foreign bank account where the charterer does not have an account with the bank's branch office and the charterer's only account is with the bank's office in the foreign jurisdiction.<sup>6</sup>

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Footnotes

- 1                    § 136.
- 2                    *Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd.*, 585 F.3d 58, 70 U.C.C. Rep. Serv. 2d 352 (2d Cir. 2009).
- 3                    *Winter Storm Shipping, Ltd. v. TPI*, 310 F.3d 263, 48 U.C.C. Rep. Serv. 2d 1255 (2d Cir. 2002) (overruled on other grounds by, *Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd.*, 585 F.3d 58, 70 U.C.C. Rep. Serv. 2d 352 (2d Cir. 2009)).
- 4                    *Day v. Temple Drilling Co.*, 613 F. Supp. 194 (S.D. Miss. 1985).
- 5                    *Sinoying Logistics Pte Ltd. v. Yi Da Xin Trading Corp.*, 619 F.3d 207 (2d Cir. 2010).
- 6                    *Allied Maritime, Inc. v. Descatrade SA*, 620 F.3d 70 (2d Cir. 2010).

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## 2 Am. Jur. 2d Admiralty § 138

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### Admiralty

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#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading

##### 3. Admiralty Process

##### b. In Personam Attachment and Garnishment

### § 138. Use of attachment to obtain security

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  47

Although the purposes of maritime attachment are to secure the respondent's appearance and to secure satisfaction in case the suit is successful,<sup>1</sup> security can be obtained only as an adjunct to the obtaining of jurisdiction over the defendant.<sup>2</sup> Maritime attachment is, therefore, inappropriate where sought solely to obtain security<sup>3</sup> or where valid quasi in rem jurisdiction has already attached to one res and the plaintiff seeks, by abandoning that action, to obtain attachment of a more valuable res.<sup>4</sup> On the other hand, the fact that attachment is a device for creating security cannot be ignored, since the value of the res effectively limits the judgment which the plaintiff can obtain, and, for this reason, a plaintiff may not create admiralty court jurisdiction by attaching a valueless res.<sup>5</sup> In making a preliminary assessment of the plaintiff's damages claim, for purposes of setting security, the court should be satisfied that the plaintiff's claims are not frivolous, but it should not require the plaintiff to prove its damages with exactitude.<sup>6</sup> On the other hand, district courts should be careful not to set or reduce unfairly the security required, especially where the likely recovery is difficult to assess preliminarily.<sup>7</sup>

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#### Footnotes

- 1 [Swift & Co. Packers v. Compania Colombiana Del Caribe, S.A.](#), 339 U.S. 684, 70 S. Ct. 861, 94 L. Ed. 1206, 19 A.L.R.2d 630 (1950); [Aurora Maritime Co. v. Abdullah Mohamed Fahem & Co.](#), 85 F.3d 44 (2d Cir. 1996); [Vitol, S.A. v. Primerose Shipping Co. Ltd.](#), 708 F.3d 527 (4th Cir. 2013).
- 2 [STX Panocean \(UK\) Co., Ltd. v. Glory Wealth Shipping Pte Ltd.](#), 560 F.3d 127 (2d Cir. 2009); [Seawind Compania, S. A. v. Crescent Line, Inc.](#), 320 F.2d 580 (2d Cir. 1963).

As to obtaining prepayment of costs and security, see § 132.

3 [Cordoba Shipping Co., Ltd. v. Maro Shipping Ltd.](#), 494 F. Supp. 183, 30 Fed. R. Serv. 2d 1408 (D. Conn. 1980).

4 [Maryland Shipbuilding & Drydock Co. v. Pacific Ruler Corp.](#), 201 F. Supp. 858 (S.D. N.Y. 1962).

5 [Robinson v. O.F. Shearer & Sons, Inc.](#), 429 F.2d 83 (3d Cir. 1970).

6 [Transportes Navieros y Terrestres S.A. de C.V. v. Fairmount Heavy Transport, N.V.](#), 572 F.3d 96 (2d Cir. 2009).

7 [Petöiffahrts KG v. Sesa Goa Ltd.](#), 642 F. Supp. 2d 216 (S.D. N.Y. 2009).

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## 2 Am. Jur. 2d Admiralty § 139

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### Admiralty

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#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading

##### 3. Admiralty Process

##### b. In Personam Attachment and Garnishment

### § 139. Presence of defendant as precluding attachment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  47

#### Forms

Forms relating to attachment and inability to find defendant in district, generally, see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure[[Westlaw® Search Query](#)]

Maritime attachment and garnishment are conditional on the presentation of an affidavit to the effect that the defendant cannot be found in the district;<sup>1</sup> thus, attachment is impermissible if a defendant can be found within the district.<sup>2</sup> Before a defendant will be considered found within a district, the defendant must be found there both for jurisdictional purposes and for service of process.<sup>3</sup> The presence of an agent authorized to accept process is, alone, insufficient to establish that a defendant is found within that district.<sup>4</sup>

Amenability to suit, rather than a party's economic and physical activities in the district at issue, is the touchstone for determining whether a party can be found within the district.<sup>5</sup>



**Observation:**

A vessel owner registered with a state's department of state is found within the district, and thus, the owner's alter ego is also found within the district, and its property is therefore not subject to maritime attachment.<sup>6</sup>

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**Footnotes**

- 1 § 136.
- 2 Blue Whale Corp. v. Grand China Shipping Development Co., Ltd., 722 F.3d 488 (2d Cir. 2013).
- 3 Navieros Inter-Americanos, S.A. v. M/V Vasilisa Exp., 120 F.3d 304, 38 Fed. R. Serv. 3d 440 (1st Cir. 1997); ProShipLine, Inc. v. Aspen Infrastructures, Ltd., 585 F.3d 105 (2d Cir. 2009).
- 4 STX Panocean (UK) Co., Ltd. v. Glory Wealth Shipping Pte Ltd., 560 F.3d 127 (2d Cir. 2009).
- 5 STX Panocean (UK) Co., Ltd. v. Glory Wealth Shipping Pte Ltd., 560 F.3d 127 (2d Cir. 2009).
- 6 Transfield ER Cape Ltd. v. Industrial Carriers, Inc., 571 F.3d 221 (2d Cir. 2009).

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## 2 Am. Jur. 2d Admiralty § 140

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### Admiralty

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#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading

##### 3. Admiralty Process

##### b. In Personam Attachment and Garnishment

### § 140. Applicability of state attachment law

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  47

Where there is no federal admiralty precedent on point, courts generally look to state law to determine property rights.<sup>1</sup>

State law may determine whether certain types of property are amenable to attachment.<sup>2</sup> State law may also determine such issues as whether a maritime garnishment served before a garnishee comes into possession of the property to be garnished is void.<sup>3</sup> Admiralty courts will, however, not allow technical niceties to defeat maritime attachment rights, and it is not sufficient to defeat a maritime attachment to plead a purely technical mistake even though the mistake might be sufficient to defeat an analogous state attachment.<sup>4</sup>

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#### Footnotes

- <sup>1</sup> [Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd.](#), 585 F.3d 58, 70 U.C.C. Rep. Serv. 2d 352 (2d Cir. 2009).

As to the role of state law, generally, see §§ 91 to 94.
- <sup>2</sup> [Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd.](#), 585 F.3d 58, 70 U.C.C. Rep. Serv. 2d 352 (2d Cir. 2009).

As to what types of property may be attached, see § 137.
- <sup>3</sup> [Reibor Intern. Ltd. v. Cargo Carriers \(KACZ-CO.\) Ltd.](#), 759 F.2d 262 (2d Cir. 1985) (garnishment void under New York law).

4 [Esso Standard \(Switzerland\) v. The Arosa Sun, 184 F. Supp. 124 \(S.D. N.Y. 1960\).](#)

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## 2 Am. Jur. 2d Admiralty § 141

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### Admiralty

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#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading

##### 3. Admiralty Process

##### b. In Personam Attachment and Garnishment

### § 141. Duration of attachment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  47

A maritime attachment must either attach property on the date of service or be void; if attachment is ineffective on the date of service, it cannot remain viable to operate against after-acquired property until the time of the garnishee's answer.<sup>1</sup>

A plaintiff is entitled to have the security amount in a maritime attachment remain in place until the completion of arbitration where the district court is unable to assess, on the basis of the record, whether the defendant's claims that the plaintiff could have or should have mitigated its damages were accurate.<sup>2</sup>

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#### Footnotes

<sup>1</sup> [Union Planters Nat. Bank v. World Energy Systems Associates](#), 816 F.2d 1092, 3 U.C.C. Rep. Serv. 2d 1090 (6th Cir. 1987).

As to answer to attachment or garnishment, see §§ [174](#) to [176](#).

<sup>2</sup> [Petöiffahrts KG v. Sesa Goa Ltd.](#), 642 F. Supp. 2d 216 (S.D. N.Y. 2009).

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## 2 Am. Jur. 2d Admiralty § 142

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### Admiralty

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#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading

##### 3. Admiralty Process

##### b. In Personam Attachment and Garnishment

### § 142. Vacatur of attachment or garnishment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  47

To avoid vacatur of a maritime attachment, the plaintiff has burden to show that: (1) it has a valid prima facie admiralty claim against the defendant; (2) the defendant cannot be found within the district; (3) the defendant's property may be found within the district; and (4) there is no statutory or maritime law bar to the attachment.<sup>1</sup> The district court must vacate a maritime attachment if the plaintiff fails to sustain the burden of showing satisfaction of the requirements of the Supplemental Rules for Admiralty or Maritime Claims.<sup>2</sup>

However, superficial compliance with the rule setting forth the process for maritime attachments,<sup>3</sup> while necessary, is not sufficient to determine that a maritime attachment is appropriate; even when an attachment is secured in conformity with the rule, equitable vacatur may nonetheless be in order.<sup>4</sup> Equitable vacatur of a maritime attachment may be appropriate where the defendant can demonstrate that (1) it is subject to suit in a convenient adjacent jurisdiction; (2) the plaintiff could obtain in personam jurisdiction over the defendant in the district where the plaintiff is located; or (3) the plaintiff has already obtained sufficient security for the potential judgment, by attachment or otherwise.<sup>5</sup> Thus, equitable vacatur of maritime attachment is allowed in situations when a plaintiff could obtain in personam jurisdiction over the defendant in the district where the plaintiff has its most significant presence.<sup>6</sup> Equitable vacatur of a maritime attachment may be appropriate where the plaintiff and defendant are both present in the same district and would be subject to jurisdiction there, but the plaintiff goes to another district to attach the defendant's assets.<sup>7</sup> Equitable vacatur of maritime attachment, in contrast to vacatur for failure to comply with the rule governing attachment, turns not on the owner of the attached funds' relationship with the jurisdiction of attachment but on both parties' relationship with another jurisdiction.<sup>8</sup>

**Observation:**

Vacating an attachment does not, in and of itself, act to terminate the admiralty jurisdiction of a district court as to an underlying alter ego complaint.<sup>9</sup>

A foreign attachment is not dissolved where a defendant subsequently appears in the district.<sup>10</sup>

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**Footnotes**

- 1 [ProShipLine, Inc. v. Aspen Infrastructures, Ltd.](#), 585 F.3d 105 (2d Cir. 2009); [Vitol, S.A. v. Primerose Shipping Co. Ltd.](#), 708 F.3d 527 (4th Cir. 2013); [Equatorial Marine Fuel Management Services Pte Ltd. v. MISC Berhad](#), 591 F.3d 1208 (9th Cir. 2010).  
As to the requirement that the defendant cannot be found in the district, see § 139.
- 2 [Sinoying Logistics Pte Ltd. v. Yi Da Xin Trading Corp.](#), 619 F.3d 207 (2d Cir. 2010).
- 3 § 136.
- 4 [ProShipLine, Inc. v. Aspen Infrastructures, Ltd.](#), 585 F.3d 105 (2d Cir. 2009).
- 5 [ProShipLine, Inc. v. Aspen Infrastructures, Ltd.](#), 585 F.3d 105 (2d Cir. 2009).
- 6 [ProShipLine Inc. v. Aspen Infrastructures Ltd.](#), 609 F.3d 960 (9th Cir. 2010).
- 7 [ProShipLine, Inc. v. Aspen Infrastructures, Ltd.](#), 585 F.3d 105 (2d Cir. 2009).
- 8 [ProShipLine, Inc. v. Aspen Infrastructures, Ltd.](#), 585 F.3d 105 (2d Cir. 2009).
- 9 [Vitol, S.A. v. Primerose Shipping Co. Ltd.](#), 708 F.3d 527 (4th Cir. 2013).
- 10 [Swift & Co. Packers v. Compania Colombiana Del Caribe, S.A.](#), 339 U.S. 684, 70 S. Ct. 861, 94 L. Ed. 1206, 19 A.L.R.2d 630 (1950).

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## 2 Am. Jur. 2d Admiralty § 143

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### Admiralty

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#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading

##### 3. Admiralty Process

##### c. In Rem Arrest

### § 143. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  48(2)

If, upon review of the complaint and any supporting papers, the conditions for an in rem action appear to exist, the court must issue an order directing the clerk to issue a warrant for the arrest of the vessel or other property that is the subject of the action.<sup>1</sup> If the plaintiff or the plaintiff's attorney certifies that exigent circumstances make review by the court impracticable, the clerk must promptly issue a summons and a warrant for the arrest of the vessel or other property that is the subject of the action.<sup>2</sup> The plaintiff has the burden in any postarrest hearing<sup>3</sup> to show that exigent circumstances existed.<sup>4</sup>

If the property that is the subject of the action consists in whole or in part of freight, the proceeds of property sold, or other intangible property, the clerk must issue—in addition to the warrant—a summons directing any person controlling the property to show cause why it should not be deposited in court to abide the judgment.<sup>5</sup> A maritime lien may be enforced not only against freight, or the earnings paid a shipowner as compensation for carrying goods, but also for demurrage and laying-up expenses since these payments serve to compensate the shipowner for loss of freight earnings.<sup>6</sup> Supplemental process enforcing the court's order may be issued by the clerk upon application without further court order.<sup>7</sup>

The failure to arrest a vessel results in a failure to establish in rem jurisdiction over the vessel,<sup>8</sup> and such an action naming the vessel as a defendant will be properly dismissed.<sup>9</sup> Further, a warrant to arrest will not be issued, and thus, admiralty jurisdiction is lacking where the agreement of the parties is essentially a sale agreement.<sup>10</sup>

**Practice Tip:**

The in rem arrest of a vessel under the Supplemental Admiralty and Maritime Claims Rule may be treated as a technical pleading error to be corrected by conversion to an in personam attachment action where there is no prejudice to the other side.<sup>11</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

General maritime law applies in a wrongful arrest of vessel case when the vessel seizure was sufficiently connected to traditional maritime activity to invoke the maritime jurisdiction of the district court. [Industrial Maritime Carriers, LLC v. Dantzler, Inc.](#), 62 F. Supp. 3d 1355 (S.D. Fla. 2014), *aff'd*, 2015 WL 3423103 (11th Cir. 2015).

### [END OF SUPPLEMENT]

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### Footnotes

- 1 Supplemental Admiralty and Maritime Claims Rule C(3)(a)(i).  
As to the contents of complaints, see §§ [121](#), [122](#).
- 2 Supplemental Admiralty and Maritime Claims Rule C(3)(a)(ii).
- 3 As to such hearing, generally, see § [160](#).
- 4 Supplemental Admiralty and Maritime Claims Rule C(3)(a)(ii).
- 5 Supplemental Admiralty and Maritime Claims Rule C(3)(c).
- 6 [Caparelli v. Proceeds of Freight](#), 390 F. Supp. 1345 (S.D. N.Y. 1974).
- 7 Supplemental Admiralty and Maritime Claims Rule C(3)(d).
- 8 [Dluhos v. Floating and Abandoned Vessel, Known as New York](#), 162 F.3d 63, 42 Fed. R. Serv. 3d 13 (2d Cir. 1998).
- 9 [International Harvester Co. v. TFL Jefferson](#), 695 F. Supp. 735 (S.D. N.Y. 1988).
- 10 [Cary Marine, Inc. v. Motorvessel Papillon](#), 872 F.2d 751 (6th Cir. 1989).
- 11 [Caribbean Yacht Works, Ltd. v. M/V "NEENAH Z"](#), 410 F. Supp. 2d 1261 (S.D. Fla. 2005).

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## 2 Am. Jur. 2d Admiralty § 144

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### Admiralty

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#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading

##### 3. Admiralty Process

##### c. In Rem Arrest

### § 144. Ancillary process

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty & Maritime Law](#) 48(2)

In any action in rem in which process has been served,<sup>1</sup> if any part of the property that is the subject of the action has not been brought within the control of the court because it has been removed or sold, or because it is intangible property in the hands of a person who has not been served with process, the court may, on motion, order any person having possession or control of such property or its proceeds to show cause why it should not be delivered into the custody of the marshal or other person or organization having a warrant for the arrest of the property, or paid into court to abide the judgment, and, after hearing, the court may enter such judgment as law and justice may require.<sup>2</sup>

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#### Footnotes

<sup>1</sup> [§ 133.](#)

<sup>2</sup> Supplemental Admiralty and Maritime Claims Rule C(5).

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## 2 Am. Jur. 2d Admiralty § 145

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Admiralty

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### IV. Admiralty Practice and Procedure

#### B. Process and Pleading

#### 3. Admiralty Process

##### c. In Rem Arrest

## § 145. In rem forfeiture actions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  48(2)

In an in rem forfeiture proceeding for the violation of a federal statute, if the defendant is not real property, the clerk must issue a warrant to arrest the property if it is in the government's possession, custody, or control.<sup>1</sup> The court, on finding probable cause, must issue a warrant to arrest the property if it is not in the government's possession, custody, or control and is not subject to a judicial restraining order.<sup>2</sup>

### Observation:

A warrant is not necessary if the property is subject to a judicial restraining order.<sup>3</sup>

### Footnotes

- 1 Supplemental Admiralty and Maritime Claims Rule G(3)(b)(i).  
If the defendant is real property, the government must proceed under [18 U.S.C.A. § 985](#). Supplemental Admiralty and Maritime Claims Rule G(3)(a).
- 2 Supplemental Admiralty and Maritime Claims Rule G(3)(b)(ii).
- 3 Supplemental Admiralty and Maritime Claims Rule G(3)(b)(iii).

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## 2 Am. Jur. 2d Admiralty § 146

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### Admiralty

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#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading

##### 3. Admiralty Process

##### c. In Rem Arrest

## § 146. Arrest in possessory, petitory, or partition actions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Admiralty & Maritime Law](#) 48(2)

### Forms

Forms relating to unauthorized assumption and partition sale, generally, see Am. Jur. Pleading and Practice Forms, Admiralty [\[Westlaw® Search Query\]](#)

In all possessory, petitory, and partition actions, a plaintiff must proceed by petitioning for a warrant of arrest of the vessel, cargo, or other property and by notice<sup>1</sup> to the adverse party or parties.<sup>2</sup>

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### Footnotes

<sup>1</sup> [§ 147.](#)

<sup>2</sup> [Supplemental Admiralty and Maritime Claims Rule D.](#)

## 2 Am. Jur. 2d Admiralty § 147

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### Admiralty

Jill Gustafson, J.D.

#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading

##### 4. Notice of Arrest or Attachment

### § 147. Actions in personam; possessory, petitory, and partition actions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  43 to 47

In an in personam attachment and garnishment action,<sup>1</sup> before a plaintiff may obtain a judgment by default, he or she must provide proof, which may be by affidavit, that:

- (1) the complaint, summons, and process of attachment or garnishment have been served on the defendant in a manner authorized by the Federal Rules of Civil Procedure;<sup>2</sup>
  - (2) the plaintiff or the garnishee has mailed to the defendant the complaint, summons, and process of attachment or garnishment, using any form of mail requiring a return receipt;<sup>3</sup> or
  - (3) the plaintiff or garnishee has tried diligently to give notice of the action to the defendant but could not do so.<sup>4</sup>
- Notice in possessory, petitory, or partition actions is provided in the same manner as is specified for in personam actions.<sup>5</sup>

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#### Footnotes

- <sup>1</sup> As to matters unique to in personam attachment and garnishment, see §§ [136](#) to [142](#).
- <sup>2</sup> Supplemental Admiralty and Maritime Claims Rule B(2)(a), referring to [Fed. R. Civ. P. 4](#).
- <sup>3</sup> Supplemental Admiralty and Maritime Claims Rule B(2)(b).
- <sup>4</sup> Supplemental Admiralty and Maritime Claims Rule B(2)(c).

As to the manner authorized by the Federal Rules of Civil Procedure for service of a complaint, summons, and process of attachment or garnishment, generally, see [Am. Jur. 2d, Process §§ 1 et seq.](#)  
[Supplemental Admiralty and Maritime Claims Rule D.](#)

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## 2 Am. Jur. 2d Admiralty § 148

American Jurisprudence, Second Edition | May 2021 Update

### Admiralty

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#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading

##### 4. Notice of Arrest or Attachment

## § 148. Actions in rem

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  [43](#), [48\(1\)](#), [48\(2\)](#)

No notice other than execution of the in rem process is required when the property that is the subject of the action has been released in accordance with the Supplemental Rules for Admiralty or Maritime Claims.<sup>1</sup> Seizure of the vessel is in itself constructive notice to all parties with an interest in the vessel.<sup>2</sup>

However, if the property is not released within 14 days after execution of process, the plaintiff must promptly, or within such time as may be allowed by the court, give public notice of the action and arrest in a newspaper designated by court order and having general circulation in the district.<sup>3</sup> The notice must specify the time within which to file a statement of interest in or right against the seized property and to answer.<sup>4</sup> The publication may be terminated if the property is released before publication is complete.<sup>5</sup>

### Practice Tip:

This rule does not affect the notice requirements in an action to foreclose a preferred ship mortgage under federal statute.<sup>6</sup>

An admiralty action in rem against a vessel may require notice of a suit to the ship owner beyond mere publication in order to meet due process requirements since, although the peculiar nature of admiralty process permits posting of a notice on a ship as the fair equivalent of personal notice to the owner, a maritime lien may not be established against a vessel where the lienor, as sole custodian of the vessel, knows that the owner was not present and that posting a notice on the vessel gave notice only to itself and not to the owner.<sup>7</sup> However, a published notice which contains a vessel's current name, its official number, and the name of its owner will satisfy the notice rules where the fact that the vessel does not contain a former name under which the lienor obtains its lien does not render notice insufficient.<sup>8</sup>

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#### Footnotes

- 1 Supplemental Admiralty and Maritime Claims Rule C(4), referring to Supplemental Admiralty and Maritime Claims Rule E(5).  
As to posting a bond to secure the release of the res, see §§ 156, 157.  
As to the procedure for obtaining release of the res, see § 160.
- 2 [DiGiovanni v. Kjessler](#), 101 F.3d 76 (9th Cir. 1996).
- 3 Supplemental Admiralty and Maritime Claims Rule C(4).
- 4 As to filing an answer to arrest, see §§ 151, 152.
- 5 Supplemental Admiralty and Maritime Claims Rule C(4).
- 6 Supplemental Admiralty and Maritime Claims Rule C(4).  
As to the foreclosure of a ship's mortgage, see § 104.
- 7 [MacDougalls' Cape Cod Marine Service, Inc. v. One Christina 40' Vessel](#), 900 F.2d 408 (1st Cir. 1990).  
Notice by publication in two newspapers and the posting of notice in the federal courthouse was not sufficient to provide notice to a state which had the sole competing claim. [Ehorn v. Sunken Vessel known as "ROSINCO"](#), 294 F.3d 856 (7th Cir. 2002).
- 8 [DiGiovanni v. Kjessler](#), 101 F.3d 76 (9th Cir. 1996).  
An amended pleading that did not disclose the precise location of a shipwreck was sufficient to allow the district court to arrest the shipwreck in an in rem admiralty proceeding where the pleading gave adequate notice of the arrest to the public and any interested parties. [Great Lakes Exploration Group, LLC v. Unidentified Wrecked and \(For Salvage-Right Purposes\), Abandoned Sailing Vessel](#), 522 F.3d 682 (6th Cir. 2008).

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## 2 Am. Jur. 2d Admiralty § 149

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### Admiralty

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#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading

##### 4. Notice of Arrest or Attachment

## § 149. Forfeiture actions in rem

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  [43](#), [48\(1\)](#), [48\(2\)](#)

In an in rem forfeiture proceeding for the violation of a federal statute, the government must send notice of the action and a copy of the complaint to any person who reasonably appears to be a potential claimant, on facts known to the government, before the end of the time for filing a claim.<sup>1</sup>

The notice must state:<sup>2</sup>

- (1) the date when the notice is sent;
- (2) a deadline for filing a claim, at least 35 days after the notice is sent;
- (3) that an answer or a motion under [Fed. R. Civ. P. 12](#) must be filed no later than 21 days after filing the claim; and
- (4) the name of the government attorney to be served with the claim and answer.

The notice must be sent by means reasonably calculated to reach the potential claimant.<sup>3</sup> The notice may be sent to the potential claimant or to the attorney representing the potential claimant with respect to the seizure of the property or in a related investigation, administrative forfeiture proceeding, or criminal case.<sup>4</sup> Notice sent to a potential claimant who is incarcerated must be sent to the place of incarceration.<sup>5</sup> Notice to a person arrested in connection with an offense giving rise to the forfeiture who is not incarcerated when notice is sent may be sent to the address that person last gave to the agency that arrested or released the person.<sup>6</sup> Notice to a person from whom the property was seized who is not incarcerated when notice is sent may be sent to the last address that person gave to the agency that seized the property.<sup>7</sup>

Direct notice is "sent" on the date when it is placed in the mail, delivered to a commercial carrier, or sent by electronic mail.<sup>8</sup>

**Practice Tip:**

A potential claimant who had actual notice of a forfeiture action may not oppose or seek relief from forfeiture because of the government's failure to send the required notice.<sup>9</sup>

In addition, in an in rem forfeiture proceeding for the violation of a federal statute, a judgment of forfeiture may be entered only if the government has published notice of the action within a reasonable time after filing the complaint or at a time the court orders.<sup>10</sup> However, notice need not be published if:<sup>11</sup>

- (1) the defendant property is worth less than \$1,000 and direct notice is sent to every person the government can reasonably identify as a potential claimant; or
- (2) the court finds that the cost of publication exceeds the property's value and that other means of notice would satisfy due process.

Unless the court orders otherwise, the notice must describe the property with reasonable particularity, state the times under which to file a claim and to answer, and name the government attorney to be served with the claim and answer.<sup>12</sup>

The following options are available means of publication reasonably calculated to notify potential claimants of the action:<sup>13</sup>

- (1) if the property is in the United States, publication in a newspaper generally circulated in the district where the action is filed, where the property was seized, or where property that was not seized is located;
- (2) if the property is outside the United States, publication in a newspaper generally circulated in a district where the action is filed, in a newspaper generally circulated in the country where the property is located, or in legal notices published and generally circulated in the country where the property is located; or
- (3) instead of the above, posting a notice on an official internet government forfeiture site for at least 30 consecutive days.

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**Footnotes**

- <sup>1</sup> Supplemental Admiralty and Maritime Claims Rule G(4)(b)(i).  
As to the time for filing a claim, see § 153.
- <sup>2</sup> Supplemental Admiralty and Maritime Claims Rule G(4)(b)(ii).
- <sup>3</sup> Supplemental Admiralty and Maritime Claims Rule G(4)(b)(iii)(A).
- <sup>4</sup> Supplemental Admiralty and Maritime Claims Rule G(4)(b)(iii)(B).
- <sup>5</sup> Supplemental Admiralty and Maritime Claims Rule G(4)(b)(iii)(C).
- <sup>6</sup> Supplemental Admiralty and Maritime Claims Rule G(4)(b)(iii)(D).

- 7 Supplemental Admiralty and Maritime Claims Rule G(4)(b)(iii)(E).  
8 Supplemental Admiralty and Maritime Claims Rule G(4)(b)(iv).  
9 Supplemental Admiralty and Maritime Claims Rule G(4)(b)(v).  
10 Supplemental Admiralty and Maritime Claims Rule G(4)(a)(i).  
11 Supplemental Admiralty and Maritime Claims Rule G(4)(a)(i).  
As to direct notice in forfeiture actions in rem, see § 149.  
12 Supplemental Admiralty and Maritime Claims Rule G(4)(a)(ii).  
As to the time in which to file a claim and to answer, see § 153.  
13 Supplemental Admiralty and Maritime Claims Rule G(4)(a)(iv).  
As to the required frequency of publication, see Supplemental Admiralty and Maritime Claims Rule G(4)(a)(iii).

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## 2 Am. Jur. 2d Admiralty § 150

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### Admiralty

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#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading


##### 5. Answer

###### a. Answer to Attachment and Garnishment

### § 150. By garnishee or defendant

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  [47](#), [61](#)

A garnishee must serve an answer, together with answers to any interrogatories served with the complaint, within 21 days after service of process.<sup>1</sup> The plaintiff may obtain compulsory process against a garnishee who refuses or neglects to answer on oath as to the debts, credits, or other effects of the defendant in the garnishee's hands, or as to any interrogatories concerning these matters propounded by the plaintiff. Subject to further order of the court, a garnishee who admits debts, credits, or effects of the defendants may either hold them in his or her hands or pay them into the registry of the court.<sup>2</sup>

A defendant must serve an answer within 30 days after process has been executed, whether by attachment of property or service on the garnishee.<sup>3</sup>

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#### Footnotes

- <sup>1</sup> Supplemental Admiralty and Maritime Claims Rule B(3)(a).  
As to service of interrogatories with the complaint, see [§ 124](#).  
As to service of process, see [§ 133](#).
- <sup>2</sup> Supplemental Admiralty and Maritime Claims Rule B(3)(a).
- <sup>3</sup> Supplemental Admiralty and Maritime Claims Rule B(3)(b).  
As to service of process, see [§ 133](#).  
As to attachment of property, see §§ [136](#) to [142](#).

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## 2 Am. Jur. 2d Admiralty § 151

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#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading

##### 5. Answer

##### b. Answer to Arrest

### § 151. Filing of answer and statement of interest

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  [48\(1\)](#), [48\(2\)](#), [61](#)

#### Forms

Forms relating to claims to vessels, generally, see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure [\[Westlaw® Search Query\]](#)

A person who asserts a right of possession or any ownership interest in the property that is the subject of the action, other than forfeiture actions for violation of a federal statute,<sup>1</sup> must file a verified statement of right or interest within 14 days after the execution of process or within the time that the court allows.<sup>2</sup> The statement of right or interest must describe the interest in the property that supports the person's demand for its restitution or right to defend the action.<sup>3</sup> Nothing in the Supplemental Rules for Admiralty or Maritime Claims imposes a time limit on the exercise of discretion to grant additional time in which to file a claim, but the court's discretion is not unbounded and may only be exercised where the goals underlying the time restriction and verification requirement are not thwarted.<sup>4</sup>

A person who asserts a right of possession or any ownership interest must serve an answer within 21 days after filing the statement of interest or right.<sup>5</sup>

An agent, bailee, or attorney who makes the claim on behalf of the person entitled to possession must state the authority to file a statement of interest on behalf of another.<sup>6</sup>

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Footnotes

- 1                   § 153.
- 2                   Supplemental Admiralty and Maritime Claims Rule C(6)(a)(i).  
As execution of process, see § 133.
- 3                   Supplemental Admiralty and Maritime Claims Rule C(6)(a)(ii).
- 4                   U.S. v. 1982 Yukon Delta Houseboat, 774 F.2d 1432 (9th Cir. 1985); U.S. v. Properties Described in  
Complaints: 764 Rochelle Drive, 612 F. Supp. 465 (N.D. Ga. 1984), judgment aff'd, 779 F.2d 58 (11th Cir.  
1985).
- 5                   Supplemental Admiralty and Maritime Claims Rule C(6)(a)(iv).
- 6                   Supplemental Admiralty and Maritime Claims Rule C(6)(a)(iii).  
The procedural requirements for claiming funds will not be satisfied where the affidavit relative to a claim  
for funds is made by the plaintiff's attorney, on information and belief, and only states that the plaintiff is in  
possession of money and that it is not subject to seizure or forfeiture, and the claimant is available to verify  
his or her own claim. Mercado v. U.S. Customs Service, 873 F.2d 641 (2d Cir. 1989).

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## 2 Am. Jur. 2d Admiralty § 152

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#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading

##### 5. Answer

##### b. Answer to Arrest

### § 152. Effect of failure to file claim; faulty filing of claim

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, Admiralty  48(1), 48(2), 61

Compliance with the Supplemental Rules for Admiralty or Maritime Claims requiring the filing of a verified statement of right or interest after execution of process for an in rem action<sup>1</sup> is obligatory in order for a party to have standing to challenge an in rem claim.<sup>2</sup> Thus, a district court does not abuse its discretion in dismissing a claim where the claimants fail to file a statement of interest or answer within the time prescribed and fail to advance any reason that would warrant relief of the consequences of their own inaction.<sup>3</sup> Also, since the filing of a statement of interest is a prerequisite to the right to file an answer and defend on the merits, if no statement is filed, the answer will be stricken from the record.<sup>4</sup>

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#### Footnotes

- <sup>1</sup> § 151.
- <sup>2</sup> *Dresdner Bank AG v. M/V OLYMPIA VOYAGER*, 463 F.3d 1233 (11th Cir. 2006).
- <sup>3</sup> *U.S. v. One Dairy Farm*, 918 F.2d 310 (1st Cir. 1990).
- <sup>4</sup> *U.S. v. Beechcraft Queen Airplane Serial No. LD-24*, 789 F.2d 627 (8th Cir. 1986); *U.S. v. Properties Described in Complaints: 764 Rochelle Drive*, 612 F. Supp. 465 (N.D. Ga. 1984), judgment aff'd, 779 F.2d 58 (11th Cir. 1985).

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## 2 Am. Jur. 2d Admiralty § 153

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### Admiralty

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#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading

##### 5. Answer

##### c. Answer to in Rem Forfeiture

### § 153. Filing claim

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  [48\(1\)](#), [48\(2\)](#), [61](#)

In an in rem forfeiture proceeding for the violation of a federal statute, a person who asserts an interest in the defendant property may contest the forfeiture by filing a claim in the court where the action is pending.<sup>1</sup> The claim must:<sup>2</sup>

- (1) identify the specific property claimed;
- (2) identify the claimant and state the claimant's interest in the property;
- (3) be signed by the claimant under penalty of perjury; and
- (4) be served on the designated government attorney.

A claim filed by a person asserting an interest as a bailee must identify the bailor and if filed on the bailor's behalf must state the authority to do so.<sup>3</sup>

Unless the court for good cause sets a different time, the claim must be filed according to the requirements of the Supplemental Rules for Admiralty or Maritime Claims.<sup>4</sup>

A claimant must serve and file an answer to the complaint or a motion under [Fed. R. Civ. P. 12](#) within 21 days after filing the claim. A claimant waives an objection to in rem jurisdiction or to venue if the objection is not made by motion or stated in the answer.<sup>5</sup>

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Footnotes

- 1 Supplemental Admiralty and Maritime Claims Rule G(5)(a)(i).
- 2 Supplemental Admiralty and Maritime Claims Rule G(5)(a)(i)(A) to (D).
- 3 Supplemental Admiralty and Maritime Claims Rule G(5)(a)(iii).
- 4 Supplemental Admiralty and Maritime Claims Rule G(5)(a)(ii).
- 5 Supplemental Admiralty and Maritime Claims Rule G(5)(b).

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## 2 Am. Jur. 2d Admiralty § 154

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#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading


##### 5. Answer

##### d. Restricted Appearance

## § 154. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  47 to 48(2), 61

### Forms

Forms relating to restricted appearance, generally, see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure [[Westlaw® Search Query](#)]

A party may make an appearance expressly restricted to defending against an admiralty and maritime claim with respect to which there has been issued in rem process or process of attachment and garnishment, and such an appearance will not be deemed to constitute an appearance for the purposes of any other claim with respect to which such process is not available or has not been served.<sup>1</sup> A restricted appearance merely prevents the defendant's appearance from becoming a basis for in personam jurisdiction and does not prevent the court from obtaining in personam jurisdiction by other available means.<sup>2</sup>

Plaintiffs may not enter a restricted appearance in order to avoid being made personally liable on counterclaims.<sup>3</sup>

Where a party fails to restrict its appearance, as in the instance where, although the party was never brought within the jurisdiction of the court by means of process, it appeared generally in an answer to a cross-claim, the party thereby waives its right to challenge jurisdiction by failing to raise it as an affirmative defense.<sup>4</sup>

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Footnotes

- 1 Supplemental Admiralty and Maritime Claims Rule E(8).
- 2 [Reliable Marine Boiler Repair, Inc. v. Mastan Co.](#), 325 F. Supp. 58 (S.D. N.Y. 1971).
- 3 [Burgess v. M/V Tamano](#), 564 F.2d 964 (1st Cir. 1977).
- 4 [U.S. v. Republic Marine, Inc.](#), 829 F.2d 1399, 95 A.L.R. Fed. 209 (7th Cir. 1987).

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## 2 Am. Jur. 2d Admiralty § 155

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### Admiralty

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#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading

##### 6. Release of Attached or Arrested Property

##### a. Providing Security for Res

### § 155. Generally; jurisdictional effect

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  52 to 57

#### Forms

Forms relating to release of vessel, generally, see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure [\[Westlaw® Search Query\]](#)

Security acts as a substitute for the res,<sup>1</sup> and by giving security, the claimant submits himself or herself to the court's jurisdiction.<sup>2</sup> Thus, posting a release bond brings the res within the court's jurisdiction.<sup>3</sup> Similarly, a stipulation for value takes the place of the res<sup>4</sup> and is alone sufficient to give jurisdiction to the admiralty court because its legal effect is the same as the presence of the res in the court's custody.<sup>5</sup> A letter of undertaking will likewise be sufficient.<sup>6</sup>

The failure to perfect service on a vessel in an in rem action does not deprive the district court of in rem jurisdiction, where the vessel owner posts a release bond, so that the relevant res to be adjudicated, the bond, is properly before the district court.<sup>7</sup>

Nowhere in the procedures governing the attachment and release of vessels is there any provision compelling an owner to furnish a bond<sup>8</sup> or, moving down the chain, any provision for an order requiring a charterer to furnish security to the shipowner.<sup>9</sup>

Footnotes

- 1 [U.S. v. Ames](#), 99 U.S. 35, 25 L. Ed. 295, 1878 WL 18238 (1878).
- 2 [Munks v. Jackson](#), 66 F. 571 (C.C.A. 9th Cir. 1895).
- 3 [Betty K Agencies, Ltd. v. M/V MONADA](#), 432 F.3d 1333 (11th Cir. 2005).  
As to a special or general bond, see §§ 156, 157.
- 4 [The Wanata](#), 95 U.S. 600, 24 L. Ed. 461, 1877 WL 18599 (1877).
- 5 [J.K. Welding Co. v. Gotham Marine Corporation](#), 47 F.2d 332 (S.D. N.Y. 1931).  
The release of arrested fishing vessels, in exchange for the owners' stipulation agreeing to post security, transferred necessities lien asserted by the provider of stevedoring services against the vessels to security posted by the owners, and thus, security was substituted for the vessels as the res subject to the district court's jurisdiction in the provider's admiralty action to enforce the lien. [Ventura Packers, Inc. v. F/V JEANINE KATHLEEN](#), 424 F.3d 852 (9th Cir. 2005).
- 6 [Petroleos Mexicanos Refinacion v. M/T KING A](#), 554 F.3d 99 (3d Cir. 2009); [Chan v. Society Expeditions, Inc.](#), 123 F.3d 1287 (9th Cir. 1997); [Louisiana ex rel. Dept. of Transp. and Development v. Kition Shipping Co., Ltd.](#), 653 F. Supp. 2d 633 (M.D. La. 2009).  
A letter of undertaking replaces the vessel as the res and moots the question of the need for a separate in rem claim but does not, without more, waive the right to seek dismissal on the basis of an applicable forum-selection clause. [Uniwire Trading LLC v. M/V Wladyslaw Orkan](#), 622 F. Supp. 2d 15 (S.D. N.Y. 2008).
- 7 [Betty K Agencies, Ltd. v. M/V MONADA](#), 432 F.3d 1333 (11th Cir. 2005).
- 8 [Seguros Banvenez, S.A. v. S/S Oliver Drescher](#), 761 F.2d 855 (2d Cir. 1985); [Capital Yacht Club v. Vessel AVIVA](#), 228 F.R.D. 389 (D.D.C. 2005).
- 9 [Seguros Banvenez, S.A. v. S/S Oliver Drescher](#), 761 F.2d 855 (2d Cir. 1985).

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## 2 Am. Jur. 2d Admiralty § 156

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#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading

##### 6. Release of Attached or Arrested Property

##### a. Providing Security for Res

## § 156. Special bond

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  [52](#) to [57](#)

### Forms

Forms relating to special bonds, generally, see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure [\[Westlaw® Search Query\]](#)

A stay of execution of marine attachment and garnishment process or in rem process, or the release of the property, may be obtained by giving security in the amount approved by the court or clerk or by stipulation of the parties, conditioned to answer the judgment of the court or any appellate court in the action.<sup>1</sup> Such a bond secures only the claim of the plaintiff in the particular action for which it is posted and does not secure the claims of others who intervene in the suit after bond has been posted and the vessel released.<sup>2</sup>

### Observation:

Although Supplemental Admiralty and Maritime Claims Rule E(5) regarding security specifically applies to maritime attachment and garnishment and actions in rem,<sup>3</sup> it is also incorporated by reference into forfeiture actions in rem arising from a federal statute.<sup>4</sup>

If the parties are unable or unwilling to stipulate the amount and nature of the security, the court will fix the principal sum of the bond or stipulation at an amount sufficient to cover the amount of the plaintiff's claim fairly stated with approved interest and costs.<sup>5</sup> However, in no event will the court fix the principal sum to exceed the smaller of (1) twice the amount of the plaintiff's claim or (2) the value of the property on due appraisal.<sup>6</sup> The bond or stipulation is conditioned for the payment of the principal sum and interest thereon at 6% per annum.<sup>7</sup>

The Supplemental Rules for Admiralty or Maritime Claims require the security to be fixed by stipulation or court order but do not thereby deprive the defendant or claimant of the absolute right to release of the property.<sup>8</sup> The provision of the rules requiring court approval, therefore, merely gives the court discretion to fix the amount of the bond and not discretion as to whether to release the property.<sup>9</sup>

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#### Footnotes

- 1 Supplemental Admiralty and Maritime Claims Rule E(5)(a).  
As to release of property after posting bond, see § 160.
- 2 [Overstreet v. Water Vessel Norkong](#), 538 F. Supp. 53 (S.D. Miss. 1982), judgment aff'd, 706 F.2d 641 (5th Cir. 1983).
- 3 Supplemental Admiralty and Maritime Claims Rule E(1).
- 4 Supplemental Admiralty and Maritime Claims Rule G(7)(b)(v).
- 5 Supplemental Admiralty and Maritime Claims Rule E(5)(a).
- 6 Supplemental Admiralty and Maritime Claims Rule E(5)(a).
- 7 Supplemental Admiralty and Maritime Claims Rule E(5)(a).  
A provision in a letter of undertaking between the owners and operators of an alliding vessel and barge and tug owners, limiting recovery to \$5.5 million "inclusive of interests and costs," did not constitute a waiver, on the part of the barge and tug owners, of an entitlement to in rem recovery of 6% postjudgment interest, where the letter of undertaking contained no definitive stipulation of value, as the parties disagreed vigorously as to the value of the vessel and eventually left it to the court to determine the value and set the principal sum.  
[Crescent Towing & Salvage Co., Inc. v. CHIOS BEAUTY MV](#), 610 F.3d 263 (5th Cir. 2010).
- 8 [Worldwide Carriers Limited v. Aris S. S. Co.](#), 290 F. Supp. 860 (S.D. N.Y. 1968); [Gerard Const., Inc. v. Motor Vessel Virginia](#), 480 F. Supp. 488 (W.D. Pa. 1979).  
As to obtaining release of the res, see §§ 160 to 162.
- 9 [Worldwide Carriers Limited v. Aris S. S. Co.](#), 290 F. Supp. 860 (S.D. N.Y. 1968).  
The right to obtain the release of arrested property upon the posting of adequate security is absolute and not subject to the court's discretion. [Capital Yacht Club v. Vessel AVIVA](#), 228 F.R.D. 389 (D.D.C. 2005).

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## § 157. General bond

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  54 to 57

### Forms

Forms relating to general bond, generally, see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure [\[Westlaw® Search Query\]](#)

An owner of a vessel may file a general bond or stipulation, with sufficient surety as approved by the court, conditioned to answer the judgment of the court in all or any actions that may thereafter be brought in such court in which the vessel is attached or arrested. Where such a general bond is filed, the execution of all subsequent process against the vessel will be stayed so long as the amount secured by the bond or stipulation is at least double the aggregate amount claimed by plaintiffs in all actions begun and pending in which the vessel has been attached or arrested.<sup>1</sup>

Judgments and remedies may be had on such bond or stipulation as if a special bond or stipulation had been filed in each of such actions. The giving of a special bond or stipulation in a particular case causes liability on the vessel's general bond or stipulation to cease as to that case.<sup>2</sup>

The district court may make necessary orders regarding a general bond and in particular may prescribe the means of giving proper notice of any action against or attachment of a vessel subject to a general bond and may require further security at any time.<sup>3</sup>

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Footnotes

- [1](#) Supplemental Admiralty and Maritime Claims Rule E(5)(b).
- [2](#) Supplemental Admiralty and Maritime Claims Rule E(5)(b).
- [3](#) Supplemental Admiralty and Maritime Claims Rule E(5)(b).

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### § 158. Security for counterclaims

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  58

If a counterclaim is asserted arising out of the same transaction or occurrence with respect to which the original action was filed, and if the defendant or claimant in the original action has given security to respond in damages, any plaintiff for whose benefit such security has been given must give security in the usual amount and form to respond in damages to the claims set forth in the counterclaim unless the court, for cause shown, otherwise directs.<sup>1</sup> The court has broad discretion in deciding whether to order countersecurity arising out of the same transaction or occurrence with respect to which the admiralty action was originally filed,<sup>2</sup> but it should do no more than screen out totally frivolous claims by the counterclaimant.<sup>3</sup> To assess whether a maritime claim and counterclaim arise from the same transaction or occurrence, courts apply the test for compulsory counterclaims.<sup>4</sup> A contingent indemnity counterclaim is not a valid basis for granting countersecurity;<sup>5</sup> however, where the parties have not engaged in any discovery and the court has only a sparse record to review, the fact that a well-pleaded counterclaim is not supported with evidence is not an obstacle to the requirement of countersecurity.<sup>6</sup>

There is no justification for applying the counterclaim security provisions to a broader class of counterclaims than that permitted under the Supplemental Rules for Admiralty or Maritime Claims generally; thus, whether claims for wrongful seizure, abuse of process, or malicious prosecution may be asserted as counterclaims in admiralty practice, countersecurity may not be required for such claims.<sup>7</sup> Countersecurity may be ordered when the plaintiff compels the defendant to give security to satisfy the plaintiff's claim; it is not necessary that a defendant previously take possession of the plaintiff's property to satisfy the defendant's counterclaim.<sup>8</sup>

Unless the court otherwise directs, proceedings on the original claim will be stayed until such security is given.<sup>9</sup>

The plaintiff is required to give security when the United States or its corporate instrumentality counterclaims and would have been required to give security to respond in damages if a private party but is relieved by law from giving security.<sup>10</sup>

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Footnotes

- 1 Supplemental Admiralty and Maritime Claims Rule E(7)(a).
- 2 [Result Shipping Co., Ltd. v. Ferruzzi Trading USA Inc.](#), 56 F.3d 394 (2d Cir. 1995).
- 3 [Ocean Line Holdings Ltd. v. China Nat. Chartering Corp.](#), 578 F. Supp. 2d 621 (S.D. N.Y. 2008).
- 4 [Phoenix Bulk Carriers, Ltd. v. America Metals Trading, LLP](#), 742 F. Supp. 2d 486 (S.D. N.Y. 2010).
- 5 As to compulsory counterclaims, generally, see [Am. Jur. 2d, Counterclaim, Recoupment, and Setoff](#) § 3. [Glory Wealth Shipping Service Ltd. v. Five Ocean Corp. Ltd.](#), 571 F. Supp. 2d 531 (S.D. N.Y. 2008), amended on reconsideration in part on other grounds, 571 F. Supp. 2d 542 (S.D. N.Y. 2008).
- 6 [Voyager Shipholding Corp. v. Hanjin Shipping Co., Ltd.](#), 539 F. Supp. 2d 688 (S.D. N.Y. 2008).
- 7 [Incas and Monterey Printing and Packaging, Ltd. v. M/V Sang Jin](#), 747 F.2d 958 (5th Cir. 1984).
- 8 [Result Shipping Co., Ltd. v. Ferruzzi Trading USA Inc.](#), 56 F.3d 394 (2d Cir. 1995).
- 9 Supplemental Admiralty and Maritime Claims Rule E(7).
- 10 Supplemental Admiralty and Maritime Claims Rule E(7)(b).

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### § 159. Modification of security

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#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  [54](#) to [57](#)

Parties may move to reduce the amount of security given or, if the security will be or has become insufficient, for provision of new or additional securities.<sup>1</sup> The court will grant such motions upon hearing but will reduce security only for good cause shown.<sup>2</sup>

While a district court may at any time require further security, such phrase means substitute or replacement security, such as when a surety has become insolvent, rather than additional security, except where the vessel was released by fraud, misrepresentation, or mistake of the court.<sup>3</sup> If a vessel is released on too low a bond as a result of fraud, misrepresentation, or mistake sufficient to justify rearrest, a court may compel additional security to be posted as a precondition to avoiding rearrest; however, a mistaken opinion concerning the duration of the litigation, as opposed to a mistake concerning the value of the ship, is not deemed such a mistake.<sup>4</sup>

A stipulation for value will generally not be set aside since it is in the nature of a contract between the parties and, like a contract, may be set aside for fraud but not for unilateral mistake.<sup>5</sup>

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#### Footnotes

<sup>1</sup> Supplemental Admiralty and Maritime Claims Rule E(6).

<sup>2</sup> Supplemental Admiralty and Maritime Claims Rule E(6).

- 3 [Moore v. M/V ANGELA](#), 353 F.3d 376 (5th Cir. 2003).
- 4 [Industria Nacional Del Papel, CA. v. M/V Albert F](#), 730 F.2d 622 (11th Cir. 1984).
- As to rearrest, see § 161.
- 5 [J.K. Welding Co. v. Gotham Marine Corporation](#), 47 F.2d 332 (S.D. N.Y. 1931).

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### § 160. Generally; right to hearing

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#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  53

#### Forms

Forms relating to release of vessel or property, generally, see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure [\[Westlaw® Search Query\]](#)

Whenever property is arrested or attached, any person claiming an interest in it is entitled to a prompt hearing at which the plaintiff is required to show why the arrest or attachment should not be vacated or other relief granted consistent with the Supplemental Rules for Admiralty or Maritime Claims.<sup>1</sup> This requirement is designed to satisfy constitutional due process by guaranteeing to the defendant a prompt postseizure hearing at which he or she can attack the complaint, the arrest, the security demanded, or any other alleged deficiency in the proceedings.<sup>2</sup> This rule, however, has no application to suits for seamen's wages when process is issued upon certification of sufficient cause or to actions by the United States for forfeitures for violation of any federal statutes.<sup>3</sup>

Any vessel, cargo, or other property in the custody of the marshal or other person or organization having the warrant may be released forthwith upon the marshal's acceptance and approval of a stipulation, bond, or other security, signed by the party on whose behalf the property is detained or the party's attorney and expressly authorizing such release, if all costs and charges of

the court and its officers have first been paid. Otherwise, no property in the custody of the marshal, other person or organization having the warrant, or other officer of the court will be released without an order of the court.<sup>4</sup> Such order may be entered by the clerk, upon the giving of approved security<sup>5</sup> or upon the dismissal or discontinuance of the action, but the marshal or other person or organization having the warrant cannot deliver any property so released until the costs and charges of the officers of the court have first been paid.<sup>6</sup>

In a possessory, petitory, or partition action, arrested property may be released only by order of the court, on such terms and conditions, and upon the giving of such security as the court may require.<sup>7</sup> However, an attorney may, as the attorney for claimants who have a vessel arrested, be authorized to release a vessel without court order where the motive in doing so is not to jeopardize the magistrate judge's jurisdiction but to curtail his or her clients' expenses in maintaining the seizure once they reach settlement of their claims.<sup>8</sup>

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Footnotes

- 1 Supplemental Admiralty and Maritime Claims Rule E(4)(f).
- 2 [Sonito Shipping Co., Ltd. v. Sun United Maritime Ltd.](#), 478 F. Supp. 2d 532 (S.D. N.Y. 2007).
- 3 Supplemental Admiralty and Maritime Claims Rule E(4)(f).  
As to the release of property in a maritime forfeiture action, see § 162.
- 4 Supplemental Admiralty and Maritime Claims Rule E(5)(c).
- 5 §§ 155 to 159.
- 6 Supplemental Admiralty and Maritime Claims Rule E(5)(c).
- 7 Supplemental Admiralty and Maritime Claims Rule E(5)(d).  
As to admiralty jurisdiction in petitory and possessory actions, see § 73.
- 8 [Chaves v. M/V Medina Star](#), 47 F.3d 153 (5th Cir. 1995).

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### § 161. Rearrest and reattachment of property

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  [47](#), [48\(2\)](#), [56](#), [57](#)

It is beyond the power of the court to recall a vessel once it has been released on bond,<sup>1</sup> nor may the vessel again be arrested on the same cause of action<sup>2</sup> even by consent of the parties.<sup>3</sup> A mistake in releasing a vessel is sufficient to justify rearrest, but this requires that the mistake be tinged with fraud or misrepresentation or that it be a mistake of the court and not that of the claimant.<sup>4</sup>

However, only the right to arrest the vessel or bring maritime attachment against it is lost by release of the maritime attachment or arrest; the vessel remains liable to common-law attachment, to the same extent as any other item of its owner's property, where the bond is insufficient to satisfy the eventual judgment and where an in personam judgment against the owner is obtained for the deficiency.<sup>5</sup> Since the original maritime lien is extinguished by the giving of a bond, any such attachment right is subject to the rights of any intervening lienors or mortgagees who have precedence as to the attached property.<sup>6</sup>

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#### Footnotes

- <sup>1</sup> [The Nightingale](#), 4 F. Supp. 494 (D. Conn. 1933).
- <sup>2</sup> [The Phantasy](#), 4 F. Supp. 920 (D. Del. 1933).
- <sup>3</sup> [The Mutual](#), 78 F. 144 (D. Conn. 1897); [The William F. McRae](#), 23 F. 557 (E.D. Mich. 1885); [The Cleveland](#), 98 F. 631 (D. Wash. 1899).

- 4                   The Haytian Republic, 154 U.S. 118, 14 S. Ct. 992, 38 L. Ed. 930 (1894); U.S. v. Ames, 99 U.S. 35, 25 L. Ed. 295, 1878 WL 18238 (1878); Petroleos Mexicanos Refinacion v. M/T KING A, 554 F.3d 99 (3d Cir. 2009); Industria Nacional Del Papel, CA. v. M/V Albert F, 730 F.2d 622 (11th Cir. 1984).
- 5                   The Morning Star, 5 F. Supp. 502 (E.D. N.Y. 1933).
- 6                   Gray v. Hopkins-Carter Hardware Co., 32 F.2d 876 (C.C.A. 5th Cir. 1929).

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### § 162. In rem forfeiture

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#) , [47](#), [48\(2\)](#), [56](#), [57](#)

Under a forfeiture action in rem arising from a federal statute, if a United States agency or an agency's contractor holds property for judicial or nonjudicial forfeiture under a statute governed by the general rules for civil forfeiture proceedings,<sup>1</sup> a person who has filed a claim to the property may petition for its release.<sup>2</sup>

If a petition for release is filed before a judicial forfeiture action is filed against the property, the petition may be filed either in the district where the property was seized or in the district where a warrant to seize the property issued. If a judicial forfeiture action against the property is later filed in another district—or if the government shows that the action will be filed in another district—the petition may be transferred to that district.<sup>3</sup>

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#### Footnotes

<sup>1</sup> [18 U.S.C.A. § 983\(f\)](#).

<sup>2</sup> Supplemental Admiralty and Maritime Claims Rule G(8)(d)(i).

<sup>3</sup> Supplemental Admiralty and Maritime Claims Rule G(8)(d)(ii).

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##### 7. Sale of Res

## § 163. Interlocutory sale

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### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  53

### Forms

Forms relating to interlocutory sales, generally, see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure [\[Westlaw® Search Query\]](#)

In attachment and garnishment or in rem actions, on application of a party, the marshal, or other person having custody of the property, the court may order all or part of the property sold—with the sales proceeds, or as much of them as will satisfy the judgment, paid into court to await further orders of the court—if:

- (1) the attached or arrested property is perishable, or liable to deterioration, decay, or injury by being detained in custody pending the action;
- (2) the expense of keeping the property is excessive or disproportionate; or
- (3) there is an unreasonable delay in securing release of the property.<sup>1</sup>

As an alternative to sale, the defendant or person filing a statement of interest or right may give security and request the court to order delivery of the res to him or her.<sup>2</sup>

Footnotes

- 1 Supplemental Admiralty and Maritime Claims Rule E(9)(a)(i).  
A shipyard that had contracted to prepare an obsolete Navy vessel for towing and eventual use as an offshore reef but after completion of the repairs allegedly had not been paid by the "ships to reefs" company in accordance with the contract, and had obtained an admiralty warrant and order of arrest for the vessel, was entitled to conduct an interlocutory sale where the shipyard had continued to store the vessel for more than six months following arrest, significant storage costs had accumulated, and no effort had been made by the company or by the city that owned the vessel to secure its release. [Colonna's Shipyard, Inc. v. U.S.A.F. GENERAL HOYT S. VANDENBERG](#), 584 F. Supp. 2d 862 (E.D. Va. 2008).  
As to the expenses of seizing and keeping property, see § 132.
- 2 Supplemental Admiralty and Maritime Claims Rule E(9)(a)(ii).  
As to filing a statement of interest, see § 151.

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##### 7. Sale of Res

### § 164. Interlocutory sale—In rem forfeiture

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#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  53

Under a forfeiture action in rem arising from a federal statute, on motion by a party or a person having custody of the property, the court may order all or part of the property sold if:<sup>1</sup>

- (1) the property is perishable or at risk of deterioration, decay, or injury by being detained in custody pending the action;
- (2) the expense of keeping the property is excessive or is disproportionate to its fair market value;
- (3) the property is subject to a mortgage or to taxes on which the owner is in default; or
- (4) the court finds other good cause.

The sale is governed by particular statutes enumerated in the rule unless all parties, with the court's approval, agree to the sale, aspects of the sale, or different procedures.<sup>2</sup>

The court may order that the property be delivered to the claimant pending the conclusion of the action if the claimant shows circumstances that would permit sale and gives security.<sup>3</sup>

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#### Footnotes

<sup>1</sup> Supplemental Admiralty and Maritime Claims Rule G(7)(b)(i).

<sup>2</sup> Supplemental Admiralty and Maritime Claims Rule G(7)(b)(iii).

3                      Supplemental Admiralty and Maritime Claims Rule G(7)(b)(v).  
As to providing security, see §§ [155](#) to [159](#).

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##### 7. Sale of Res

## § 165. Person making sale; sale proceeds

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### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  53

### Forms

Forms relating to sale of vessel, generally, see Am. Jur. Pleading and Practice Forms, Admiralty [\[Westlaw® Search Query\]](#)

In attachment and garnishment or in rem actions, all sales of property must be made by the marshal or a deputy marshal, or by any other person or organization having the warrant, or by any other person assigned by the court where the marshal or other person or organization having the warrant is a party in interest.<sup>1</sup>

Proceeds of the sale must be forthwith paid into the registry of the court to be disposed of according to law.<sup>2</sup> Costs incurred by a vessel's custodian can be deducted from the proceeds of the sale where the actions by the custodian incurring the costs are was carried out in the best interests of the vessel.<sup>3</sup>

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### Footnotes

<sup>1</sup> Supplemental Admiralty and Maritime Claims Rule E(9)(b).



The marshal will not be held in contempt for refusing to sell a vessel, even though the outgoing judge orders the sale, where the marshal never lawfully arrested the vessel the plaintiff held as a substitute custodian, and the maritime lienholder failed to make the refundable deposit for the marshal's fees and follow the requirements of the Supplemental Rules for Admiralty or Maritime Claims calling for notice to the claimants.

[Nuta v. M/V Fountas Four](#), 753 F. Supp. 352 (S.D. Fla. 1990).

2 Supplemental Admiralty and Maritime Claims Rule E(9)(b).

3 [Scotiabank de Puerto Rico v. M/V ATUTI](#), 326 F. Supp. 2d 282 (D.P.R. 2004).

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### § 166. Person making sale; sale proceeds—In rem forfeiture

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#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  53

Under a forfeiture action in rem arising from a federal statute, a sale must be made by a United States agency that has authority to sell the property, by the agency's contractor, or by any person the court designates.<sup>1</sup>

In an interlocutory sale, proceeds are a substitute res subject to forfeiture in place of the property that was sold. The proceeds must be held in an interest-bearing account maintained by the United States pending the conclusion of the forfeiture action.<sup>2</sup> Upon entry of a forfeiture judgment, the property or proceeds from selling the property must be disposed of as provided by law.<sup>3</sup>

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#### Footnotes

- <sup>1</sup> Supplemental Admiralty and Maritime Claims Rule G(7)(b)(ii).
- <sup>2</sup> Supplemental Admiralty and Maritime Claims Rule G(7)(b)(iv).
- <sup>3</sup> Supplemental Admiralty and Maritime Claims Rule G(7)(c).

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##### 8. Parties

##### a. In General

### § 167. Generally

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#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  [40](#) to [42](#), [50](#), [51](#)

The term "claimant" may be used to designate the libellant in a proceeding in rem<sup>1</sup> or to designate one who, in such a proceeding, appears to claim the res proceeded against or some interest therein.<sup>2</sup> "Defendant" is used flexibly, sometimes referring to the respondent and sometimes to one who raises a claim to the res proceeded against and thus opposes the libellant's demand.<sup>3</sup>

There can be no objection, in admiralty, to the designation of a party by a fictitious name if the party's true name is in fact unknown to the one using the fictitious designation.<sup>4</sup>

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#### Footnotes

- <sup>1</sup> U.S. v. 422 Casks of Wine, 26 U.S. 547, 7 L. Ed. 257, 1828 WL 3018 (1828).
- <sup>2</sup> The Lottawanna, 87 U.S. 201, 22 L. Ed. 259, 1873 WL 15971 (1873).  
As to the status of the claimant, see § 168.
- <sup>3</sup> Atlantic Mut. Ins. Co. v. Alexandre, 16 F. 279 (S.D. N.Y. 1883).
- <sup>4</sup> Phillips v. U.S., 127 F. Supp. 912 (N.D. Cal. 1955).

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### § 168. Defendants and claimants in proceedings in rem

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#### West's Key Number Digest

West's Key Number Digest, Admiralty  40 to 42, 50

#### Forms

Forms relating to ownership by defendant: see Am. Jur. Pleading and Practice Forms, Admiralty [\[Westlaw® Search Query\]](#)

Although technically, in an in rem proceeding the res, not its owner, is the party defendant,<sup>1</sup> such a proceeding nevertheless incidentally affects the persons interested in the res, and they are entitled to defend it against the claim.<sup>2</sup> Accordingly, in a proceeding in rem, by virtue of dominion over the thing, persons interested in it are deemed to be parties to the suit.<sup>3</sup> However, a judgment creditor, absent service of process upon the vessel owner, is only able to enforce a lien against the vessel itself; in an in rem action, the owner may not be personally liable for the judgment in excess of the value of the vessel.<sup>4</sup> Where an action is brought in rem against the vessel, the claimant is in effect an intervenor who submits to the jurisdiction of the court to the extent of his or her stake in the res or, where he or she substitutes a stipulation of value for the res, to the amount of the stipulation.<sup>5</sup> However, a claimant differs from an ordinary intervenor in that he or she asserts not only an interest in the res but also a right of possession with the corresponding right to substitute security for the res in order to prevent its sale to satisfy any judgment rendered against it.<sup>6</sup>

One who has merely a collateral interest in a question involved in the suit, but has no active concern in the res, cannot be a party.<sup>7</sup>

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Footnotes

- 1 § 26.
- 2 *The Cartona*, 297 F. 827 (C.C.A. 2d Cir. 1924).
- 3 *Rounds v. Cloverport Foundry & Mach. Co.*, 237 U.S. 303, 35 S. Ct. 596, 59 L. Ed. 966 (1915).
- 4 *Navieros Inter-Americanos, S.A. v. M/V Vasilisa Exp.*, 120 F.3d 304, 38 Fed. R. Serv. 3d 440 (1st Cir. 1997).
- 5 *J.K. Welding Co. v. Gotham Marine Corporation*, 47 F.2d 332 (S.D. N.Y. 1931).
- 6 *The Two Marys*, 12 F. 152 (S.D. N.Y. 1882).
- 7 *Humes v. Alaska Transp. Co.*, 180 F.2d 534 (9th Cir. 1950).

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### § 169. Joinder of in rem and in personam defendants

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#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  42, 50

A vessel, cargo, or other property subject to admiralty process in rem may be joined in one action as defendants if any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences, and any question of law or fact common to all defendants will arise in the action.<sup>1</sup> A plaintiff who chooses to join property subject to admiralty in rem may do so only if he or she elects to waive the right to a jury trial.<sup>2</sup> While the right to a jury trial is not waived by asserting the same rights both in personam and in rem, the plaintiff will be required to make an election as to which defendant to proceed against and may have a jury trial only if the choice to proceed is in personam.<sup>3</sup>

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#### Footnotes

- <sup>1</sup> Fed. R. Civ. P. 20(a)(2).
- <sup>2</sup> [Fernandes v. United Fruit Co.](#), 303 F. Supp. 681 (D. Md. 1969).  
As to when the right to trial by jury may arise in connection with admiralty proceedings, see [§ 187](#).
- <sup>3</sup> [Johnson v. Venezuelan Line S. S. Co.](#), 314 F. Supp. 1403 (E.D. La. 1970).

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## § 170. Intervention

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### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  50

### Forms

Forms relating to intervening or intervention: see Am. Jur. Pleading and Practice Forms, Admiralty [\[Westlaw® Search Query\]](#)

Intervention in admiralty cases is governed by the Federal Rules of Civil Procedure.<sup>1</sup> Where crew members of an arrested vessel file a document entitled notice of maritime liens and motion to enforce, such document may be construed as a motion to intervene and complaint, and any deficiencies may be corrected.<sup>2</sup>

A surety may lack a legal interest sufficient to justify intervention where the motion to intervene is filed prior to the making of any payments under a federal maritime bond and the charterer has not failed to indemnify the surety for such amount.<sup>3</sup>

A court may condition the intervenor's participation in an in rem admiralty case upon the intervenor arresting the vessel and sharing in maintenance expenses.<sup>4</sup> Although it has also been held that an intervenor has standing to contest a claim even though the intervenor has not filed a verified claim to the vessel pursuant to the Supplemental Rules for Admiralty or Maritime Claims where no execution on any vessel or tangible property has occurred and no warrant for arrest of the vessel has been issued.<sup>5</sup>

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Footnotes

- 1 Fed. R. Civ. P. 24.
- 2 Isbrandtsen Marine Services, Inc. v. M/V Inagua Tania, 93 F.3d 728 (11th Cir. 1996).
- 3 Patricia Hayes Associates, Inc. v. Cammell Laird Holdings U.K., 339 F.3d 76, 56 Fed. R. Serv. 3d 227 (2d Cir. 2003).
- 4 Beauregard, Inc. v. Sword Services L.L.C., 107 F.3d 351, 37 Fed. R. Serv. 3d 123 (5th Cir. 1997).
- 5 Smith v. The Abandoned Vessel, 610 F. Supp. 2d 739 (S.D. Tex. 2009).

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### § 171. Class actions

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#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  41

As a result of the unification of the rules of procedure for admiralty and civil cases, class actions are permitted in admiralty.<sup>1</sup> All the general federal procedural requirements for class actions generally apply to admiralty cases.<sup>2</sup> Although generally mass accidents are not the basis of an admiralty class action, class actions have been allowed in cases involving food poisoning aboard a ship.<sup>3</sup>

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#### Footnotes

- 1 [Fowles v. American Export Lines, Inc.](#), 300 F. Supp. 1293 (S.D. N.Y. 1969), order aff'd, 449 F.2d 1269 (2d Cir. 1971).
- 2 [Fed. R. Civ. P. 23](#).
- 3 [Hernandez v. Motor Vessel Skyward](#), 61 F.R.D. 558 (S.D. Fla. 1973), aff'd, 507 F.2d 1278 (5th Cir. 1975) and aff'd, 507 F.2d 1279 (5th Cir. 1975) and (rejected on other grounds by, [McDonnell-Douglas Corp. v. U.S. Dist. Court for Central Dist. of California](#), 523 F.2d 1083 (9th Cir. 1975)); [Bentkowski v. Marfuerza Compania Maritima, S. A.](#), 70 F.R.D. 401 (E.D. Pa. 1976).

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##### b. Who May Sue; Real Party in Interest

### § 172. Generally

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#### West's Key Number Digest

West's Key Number Digest, Admiralty  40 to 42

Admiralty favors the principle that the real party in interest is a proper party and the party entitled to relief.<sup>1</sup> Actual title, or ownership of record, is not required to have standing to sue in admiralty for damage to property as long as the plaintiff has an actual proprietary interest.<sup>2</sup> A proprietary interest supporting standing to sue in admiralty may exist by demonstrating actual possession or control, responsibility for repair, and responsibility for maintenance.<sup>3</sup>

A suit in admiralty must be brought by the real party in interest rather than in the name of one person for the benefit of another.<sup>4</sup> This principle is flexible, however, and under appropriate circumstances, a party may sue for the benefit of another,<sup>5</sup> such as where crew members of a fishing vessel are entitled to a percentage of the proceeds from the sale of fish caught to recover their share of loss of fish in the net at the time of the accident and future damages resulting from loss of prospective catches during the period the net was being repaired although none of the crew members owned any interest in the vessel or the net.<sup>6</sup> Also, collision suits for damage to the vessel as well as to the cargo are frequently prosecuted only by the owners of the vessel.<sup>7</sup> In addition, the indorsee of a maritime bill of lading may sue in admiralty for nondelivery of the goods even though the beneficial interest is in another person.<sup>8</sup>

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#### Footnotes

<sup>1</sup> [Polo Ralph Lauren, L.P. v. Tropical Shipping & Const. Co., Ltd.](#), 215 F.3d 1217 (11th Cir. 2000).

- 2                   McLean Contracting Co. v. Waterman S.S. Corp., 131 F. Supp. 2d 817 (E.D. Va. 2001), judgment aff'd, 277  
F.3d 477 (4th Cir. 2002).
- 3                   McLean Contracting Co. v. Waterman S.S. Corp., 131 F. Supp. 2d 817 (E.D. Va. 2001), judgment aff'd, 277  
F.3d 477 (4th Cir. 2002).
- 4                   Wittig v. Canada S.S. Lines, 59 F.2d 428 (W.D. N.Y. 1932).
- 5                   Fretz v. Bull, 53 U.S. 466, 12 How. 466, 13 L. Ed. 1068, 1851 WL 6621 (1851).
- 6                   Carbone v. Ursich, 209 F.2d 178 (9th Cir. 1953).
- 7                   The Commander-in-Chief, 68 U.S. 43, 17 L. Ed. 609, 1863 WL 6616 (1863).
- 8                   The Thames, 81 U.S. 98, 20 L. Ed. 804, 1871 WL 14784 (1871).
- The consignee of goods is entitled to sue in his or her own name. *The Speybank*, 28 F.2d 436 (D. Md. 1928).

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### § 173. Agent or proctor

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#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  40 to 42

In admiralty, an agent may sue in his or her own name, for example, where the owners are absent.<sup>1</sup> The agent may also sue in his or her name in class suits<sup>2</sup> and may do so as well as in the name of the principal.<sup>3</sup>

In determining whether a libellant's proctor was authorized to file suit, the principle is applied that considered steps in litigation taken by a member of the bar of a court are binding on a client unless fraud is shown.<sup>4</sup>

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#### Footnotes

- 1 [The North Carolina](#), 40 U.S. 40, 10 L. Ed. 653, 1841 WL 5035 (1841).
- 2 [§ 171](#).
- 3 [The Thames](#), 81 U.S. 98, 20 L. Ed. 804, 1871 WL 14784 (1871); [McKinlay v. Morrish](#), 62 U.S. 343, 21 How. 343, 16 L. Ed. 100, 1858 WL 9378 (1858); [The North Carolina](#), 40 U.S. 40, 10 L. Ed. 653, 1841 WL 5035 (1841).
- 4 [Jackson v. Ore Nav. Corp.](#), 159 F. Supp. 935 (D. Md. 1958).

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### § 174. Bailee or bailor

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#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  40 to 42

Since in admiralty a possessory title is sufficient to enable a person to be the party plaintiff, a bailee may sue for damage inflicted on cargo in its possession.<sup>1</sup> Thus, a carrier may sue for damage to the property carried.<sup>2</sup> Suit may also be instituted in the name of the bailor as, for instance, the consignee of the cargo.<sup>3</sup>

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#### Footnotes

- <sup>1</sup> [Newell v. Norton](#), 70 U.S. 257, 18 L. Ed. 271, 1865 WL 10771 (1865); [Fretz v. Bull](#), 53 U.S. 466, 12 How. 466, 13 L. Ed. 1068, 1851 WL 6621 (1851).
- <sup>2</sup> [The Beaconsfield](#), 158 U.S. 303, 15 S. Ct. 860, 39 L. Ed. 993 (1895); [The Commander-in-Chief](#), 68 U.S. 43, 17 L. Ed. 609, 1863 WL 6616 (1863).
- <sup>3</sup> [The Vaughan & Telegraph](#), 81 U.S. 258, 20 L. Ed. 807, 1871 WL 14715 (1871); [McKinlay v. Morrish](#), 62 U.S. 343, 21 How. 343, 16 L. Ed. 100, 1858 WL 9378 (1858); [The North Carolina](#), 40 U.S. 40, 10 L. Ed. 653, 1841 WL 5035 (1841).  
A consignee may sue either in his or her own name or in the name of the principal. [The Nail City](#), 22 F. 537 (W.D. Pa. 1884).

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### § 175. Assignee or assignor

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#### West's Key Number Digest

West's Key Number Digest, Admiralty  40 to 42

In admiralty, suit may be maintained in the name of an assignor for the benefit of the assignee,<sup>1</sup> and an assignee suing in his or her own name need not join as plaintiff the assignor or any other party who has a remaining beneficial interest.<sup>2</sup> However, a libelant may join a claim he or she has as assignee with one that he or she has in his or her own right.<sup>3</sup>

#### Caution:

Courts of admiralty do not look with favor on assignments executed solely to confer jurisdiction and will sometimes decline to assume jurisdiction based solely on such a colorable assignment.<sup>4</sup>

#### Footnotes

- 1                    Republic of Turkey v. Zadeh, 112 F. Supp. 933 (S.D. N.Y. 1953).
- 2                    American Steel Barge Co. v. Chesapeake & O. Coal Agency Co., 115 F. 669 (C.C.A. 1st Cir. 1902).
- 3                    The Prussia, 100 F. 484 (C.C.D. Wash. 1900).
- 4                    Wittig v. Canada S.S. Lines, 59 F.2d 428 (W.D. N.Y. 1932).

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## § 176. Insurer or insured

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### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  40 to 42

An insurance company may appear as a libellant in its own name in admiralty, to enforce the insured's right against a third party, if the company is subrogated to the right of the insured<sup>1</sup> or the suit is for reimbursement to the company for the amount it has paid to the insured.<sup>2</sup> If the insurer has not fully paid the amount of loss for which the third party is liable to the insured, the suit against the third party must be in the name of the insured, who, with reference to the amount paid to the insured by the insurer, acts as a trustee.<sup>3</sup>

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#### Footnotes

- 1 [Czaplicki v. The Hoegh Silvercloud](#), 351 U.S. 525, 76 S. Ct. 946, 100 L. Ed. 1387 (1956); [Liverpool & G.W. Steam Co. v. Phenix Ins. Co.](#), 129 U.S. 397, 9 S. Ct. 469, 32 L. Ed. 788 (1889).
- 2 [Liverpool & G.W. Steam Co. v. Phenix Ins. Co.](#), 129 U.S. 397, 9 S. Ct. 469, 32 L. Ed. 788 (1889); [The Potomac](#), 105 U.S. 630, 26 L. Ed. 1194, 1881 WL 19908 (1881).
- 3 [Fairgrieve v. Marine Ins. Co. of London](#), 94 F. 686 (C.C.A. 8th Cir. 1899).

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### A.L.R. Library

[Right of tortfeasor other than vessel jointly responsible with stevedore or other employer for injuries to employee to recover indemnity from employer under Longshoremen's and Harbor Workers' Compensation Act \(33 U.S.C.A. secs. 901 et seq.\), 47 A.L.R. Fed. 416](#)

[Right of injured employee to sue third-party tortfeasor under, or affected by, sec. 33\(b\) of the Longshoremen's and Harbor Workers' Compensation Act \(33 USC sec. 933\(b\)\), 2 A.L.R. Fed. 1014](#)

### Forms

Forms relating to third-parties, generally, see Am. Jur. Pleading and Practice Forms, Admiralty[\[Westlaw® Search Query\]](#)

The rule regarding impleader of admiralty and maritime claims<sup>1</sup> is not exclusive of, but rather supplemental to, the general rule as to when a defendant may bring in a third party<sup>2</sup> and must be interpreted by reference thereto.<sup>3</sup>

When a plaintiff asserts an admiralty or maritime claim, the defendant or a person who states a right through a statement of interest<sup>4</sup> may, as a third-party plaintiff, bring in a third-party defendant who may be wholly or partly liable, either to the plaintiff or to the third-party plaintiff, by way of remedy over, contribution, or otherwise on account of the same transaction, occurrence, or series of transactions or occurrences.<sup>5</sup> No indemnity or other relationship is required between the defendant and the third-party defendant.<sup>6</sup> All potential joint tortfeasors may be made third-party defendants,<sup>7</sup> and the rule does not limit the right to bring in third-party defendants to persons asserting in rem rights.<sup>8</sup>

The third-party plaintiff may demand judgment against the third-party defendant in favor of the plaintiff, in which event the third-party defendant must defend under [Fed. R. Civ. P. 12](#) against the plaintiff's claim as well as to that of the third-party plaintiff, and the action must proceed as if the plaintiff had sued both the third-party defendant and the third-party plaintiff.<sup>9</sup> This rule is liberally construed; thus, where the third-party plaintiff states in its complaint that the third-party defendant make its defenses and answer directly to the claims of the plaintiff, a sufficient demand for judgment has been made.<sup>10</sup> If the unmistakable meaning of the third-party complaint is to designate the third-party defendant as a defendant to the plaintiff's complaint, the action may proceed as if the plaintiff had commenced it directly against the third-party defendant, even though the third-party complaint does not contain the words "demand judgment," and the third-party defendant may not be voluntarily dismissed from the action by the defendant without permission of the plaintiff.<sup>11</sup> However, if the third-party complaint does not demand judgment against the third-party defendant to be entered in favor of the plaintiff, the plaintiff may not use the provisions of the impleader rule to advance a direct claim against the third-party defendant.<sup>12</sup> Usually, there must be an independent source of jurisdiction over that claim.<sup>13</sup> However, the failure of the defendant to properly invoke the impleader rule, so as to allow judgment directly against the third party in favor of the plaintiff, does not affect the third party's liability for contribution if the defendant properly instituted its third-party action under the general third-party practice rule.<sup>14</sup> Once a third-party plaintiff makes the proper demand that the action proceed as if the plaintiff had commenced it directly against the third-party defendant, and where the third-party complaint details how the third party's lack of care damaged the plaintiff, the plaintiff is not required to amend its complaint to assert specific claims against the third-party defendant.<sup>15</sup>

Where a settling defendant files a third-party complaint for contribution in federal court, the third-party defendant's maritime tort counterclaim becomes a compulsory counterclaim in that it arises from the same transaction or occurrence as the defendant's third-party complaint against it for contribution; in such a case, the court may dismiss the third-party defendant's counterclaim if there is no inclusion in the pleading invoking the court's admiralty jurisdiction.<sup>16</sup>

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#### Footnotes

- 1 [Fed. R. Civ. P. 14\(c\).](#)
- 2 [Fed. R. Civ. P. 14\(a\).](#)
- 3 [Rosario v. American Export-Isbrandtsen Lines, Inc., 531 F.2d 1227 \(3d Cir. 1976\).](#)
- 4 [§ 151.](#)
- 5 [Fed. R. Civ. P. 14\(c\)\(1\).](#)
- 6 [Stinson v. S. S. Kenneth McKay, 360 F. Supp. 674 \(S.D. Tex. 1973\).](#)
- 7 [Leger v. Drilling Well Control, Inc., 69 F.R.D. 358 \(W.D. La. 1976\), judgment aff'd, 592 F.2d 1246 \(5th Cir. 1979\).](#)
- 8 [Lawrence v. IMAGINE. . . !, 333 F. Supp. 2d 379 \(D. Md. 2004\).](#)

9 Fed. R. Civ. P. 14(c)(2).  
10 Royal Ins. Co. of America v. Southwest Marine, 194 F.3d 1009, 44 Fed. R. Serv. 3d 1279 (9th Cir. 1999).  
11 U.S. v. Isco, Inc., 463 F. Supp. 1293, 27 Fed. R. Serv. 2d 305 (E.D. Wis. 1979).  
12 Rosario v. American Export-Isbrandtsen Lines, Inc., 531 F.2d 1227 (3d Cir. 1976); Northern Contracting  
Co. v. C.J. Langenfelder & Son, Inc., 439 F. Supp. 621, 24 Fed. R. Serv. 2d 501 (E.D. Pa. 1977).  
13 § 179.  
14 Seal Offshore, Inc. v. American Standard, Inc., 777 F.2d 1042 (5th Cir. 1985) (referring to Fed. R. Civ. P.  
14(a)).  
15 Royal Ins. Co. of America v. Southwest Marine, 194 F.3d 1009, 44 Fed. R. Serv. 3d 1279 (9th Cir. 1999).  
16 Murphy v. Florida Keys Elec. Co-op. Ass'n, Inc., 329 F.3d 1311 (11th Cir. 2003).

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### § 178. Impleader by defendant in civil case

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#### West's Key Number Digest

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#### Forms

Forms relating to impleader, generally, see Am. Jur. Pleading and Practice Forms, Admiralty [\[Westlaw® Search Query\]](#)

While the distinctive rule governing third-party practice in admiralty and maritime cases<sup>1</sup> is not applicable if the case is brought on the "law side" of the court,<sup>2</sup> a defendant in a nonmaritime civil action can utilize the usual rule governing third-party actions<sup>3</sup> to implead third-party defendants whose liability is purely in admiralty.<sup>4</sup>

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#### Footnotes

<sup>1</sup> Fed. R. Civ. P. 14(c).

<sup>2</sup> *Harrison v. Glendel Drilling Co.*, 679 F. Supp. 1413 (W.D. La. 1988).

<sup>3</sup> Fed. R. Civ. P. 14(a).

4 [Hidick v. Orion Shipping & Trading Co.](#), 152 F. Supp. 630 (S.D. N.Y. 1957); [Canale v. American Export Lines](#), 17 F.R.D. 269 (S.D. N.Y. 1955); [Swans v. U.S. Lines, Inc.](#), 407 F. Supp. 388 (E.D. Pa. 1975).

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### § 179. Plaintiff's ability to bring direct action against third party

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#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  50

A plaintiff may only bring an admiralty claim directly against a third-party defendant if there is an independent jurisdictional basis for such a claim.<sup>1</sup> Since only defendants, defending parties, or person who assert an interest are authorized to file third-party complaints,<sup>2</sup> it does not obligate a defendant to implead third parties, and the plaintiff cannot require the defendant to do so.<sup>3</sup> However, if jurisdiction would exist for the defendant to proceed against a potential third-party defendant, the plaintiff may proceed directly against the potential third-party defendant by naming such party as a codefendant, even though there is no independent jurisdiction over the plaintiff's direct claim against such party, where, if the plaintiff did not bring a direct action, the defendant will use [Fed. R. Civ. P. 14\(c\)](#) to bring in the codefendant as a third-party defendant.<sup>4</sup>

Conversely, the defendant's ability to implead a third-party defendant under [Fed. R. Civ. P. 14\(a\)](#) is not affected by the fact that the plaintiff could have sued the third party directly but chose not to do so.<sup>5</sup>

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#### Footnotes

- <sup>1</sup> [Rosario v. American Export-Isbrandtsen Lines, Inc.](#), 531 F.2d 1227 (3d Cir. 1976); [Northern Contracting Co. v. C.J. Langenfelter & Son, Inc.](#), 439 F. Supp. 621, 24 Fed. R. Serv. 2d 501 (E.D. Pa. 1977).
- <sup>2</sup> [Retcal, Inc. v. Insular Lumber Co. \(Phil.\), Inc.](#), 379 F. Supp. 62 (C.D. Cal. 1973).
- <sup>3</sup> [City of Gretna v. Defense Plant Corp.](#), 159 F.2d 412 (C.C.A. 5th Cir. 1947).
- <sup>4</sup> [Consolidated Cork Corp. v. Jugoslavenska Linijska Plovidba](#), 318 F. Supp. 1209 (S.D. N.Y. 1970).

The rule that impleader under [Fed. R. Civ. P. 14\(c\)](#) has the same effect as a direct action by the plaintiff against a third party is discussed in [§ 177](#).

5

[Seal Offshore, Inc. v. American Standard, Inc., 777 F.2d 1042 \(5th Cir. 1985\)](#).

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### § 180. Impleader of nonadmiralty claim

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West's Key Number Digest, [Admiralty](#)  50

The federal procedural rule permitting impleading of third parties in admiralty actions<sup>1</sup> does not confer jurisdiction.<sup>2</sup> As a result, questions of supplemental jurisdiction may arise.<sup>3</sup>

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#### Footnotes

- <sup>1</sup> Fed. R. Civ. P. 14(c).
- <sup>2</sup> *Bernard v. U.S. Lines, Inc.*, 475 F.2d 1134 (4th Cir. 1973); *Morse Electro Products Corp. v. S.S. Great Peace*, 437 F. Supp. 474 (D.N.J. 1977); *Stinson v. S. S. Kenneth McKay*, 360 F. Supp. 674 (S.D. Tex. 1973).
- <sup>3</sup> § 21.

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### § 181. Findings of court

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  [79](#), [81](#), [82](#)

Admiralty cases are governed by the same procedural rules applicable to civil cases in respect to the binding effect of the court's findings.<sup>1</sup> The "clearly erroneous" standard of review applicable to civil proceedings is applicable to findings made in admiralty cases; for example, it applies to findings on questions of negligence,<sup>2</sup> proximate cause,<sup>3</sup> unseaworthiness,<sup>4</sup> and to establishing the priority of liens to a vessel.<sup>5</sup> A court does not abuse its discretion by failing to make a specific finding of fact where such fact is not an ultimate fact necessary to reach a decision.<sup>6</sup>

Under the doctrine of comparative negligence, which is applied in admiralty, it is the responsibility of the trial judge as the fact finder to assess the facts and apportion the negligence of the parties as he or she deems proper.<sup>7</sup>

In any admiralty case in which the trial court refuses to award prejudgment interest, the best practice is for it to detail the peculiar circumstance it has found and specifically indicate that it is denying prejudgment interest as an exercise of the discretion created by the existence of peculiar circumstances; in the absence of clear findings by the district court, an appellate court could search the record for peculiar circumstances and decide to award or deny prejudgment interest without a remand.<sup>8</sup>

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#### Footnotes

1                   Fed. R. Civ. P. 52.  
As to findings by the court, generally, see Am. Jur. 2d, Trial §§ 1673 to 1696.  
2                   Ente Nazionale Per L'Energia Elettrica v. Baliwag Nav., Inc., 774 F.2d 648 (4th Cir. 1985); Landry v.  
Oceanic Contractors, Inc., 731 F.2d 299 (5th Cir. 1984); Glenview Park Dist. v. Melhus, 540 F.2d 1321 (7th  
Cir. 1976).  
3                   Landry v. Oceanic Contractors, Inc., 731 F.2d 299 (5th Cir. 1984).  
4                   Aguirre v. Citizens Cas. Co. of New York, 441 F.2d 141 (5th Cir. 1971).  
5                   Wardley Intern. Bank, Inc. v. Nasipit Bay Vessel, 841 F.2d 259 (9th Cir. 1988).  
6                   Doyle v. Graske, 579 F.3d 898 (8th Cir. 2009), as amended, (Oct. 21, 2009) (the fact as to where a boat  
passenger was sitting when the accident occurred was not an ultimate fact).  
7                   St. Hilaire Moye v. Henderson, 496 F.2d 973 (8th Cir. 1974).  
8                   St. Paul Fire and Marine Ins. Co. v. Lago Canyon, Inc., 561 F.3d 1181, 72 Fed. R. Serv. 3d 1260 (11th Cir.  
2009).  
As to awarding prejudgment interest, see § 183.

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## 2 Am. Jur. 2d Admiralty § 182

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[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Admiralty](#) , [70](#), [79](#), [82](#)

### Trial Strategy

[Proof of Negligence in Repair of Vessel](#), 138 Am. Jur. Proof of Facts 3d 377

[Proof of Liability in Collision of Ships at Sea](#), 135 Am. Jur. Proof of Facts 3d 411

In admiralty, the party who has an affirmative issue has the burden of proving it<sup>1</sup> in the absence of an admission obviating the necessity of proof.<sup>2</sup> The plaintiff may have the benefit of certain presumptions, such as those applicable in a collision case.<sup>3</sup>

The party who claims the applicability of foreign law has the burden of pleading and proving it.<sup>4</sup>

In a claim for negligence, proximate cause must be established.<sup>5</sup>

In admiralty actions, plaintiffs must prove their claims by a preponderance of the evidence, whether direct or circumstantial.<sup>6</sup>

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Footnotes

- 1 [Swift & Co. Packers v. Compania Colombiana Del Caribe, S.A.](#), 339 U.S. 684, 70 S. Ct. 861, 94 L. Ed. 1206, 19 A.L.R.2d 630 (1950); [The L. P. Dayton](#), 120 U.S. 337, 7 S. Ct. 568, 30 L. Ed. 669 (1887).
- 2 [Packet Co. v. Clough](#), 87 U.S. 528, 22 L. Ed. 406, 1874 WL 17387 (1874); [The Potomac](#), 75 U.S. 590, 19 L. Ed. 511, 1869 WL 11467 (1869).
- 3 [Am. Jur. 2d, Shipping § 529](#).
- 4 [The Silverpalm](#), 79 F.2d 598 (C.C.A. 9th Cir. 1935); [The Snetind](#), 276 F. 139 (D. Me. 1921); [The Ubbergen](#), 30 F.2d 951 (E.D. N.Y. 1925).  
[As to when foreign law may be applied in an admiralty action, see § 87.](#)
- 5 [Exxon Co. v. Sofec, Inc.](#), 54 F.3d 570 (9th Cir. 1995), judgment [aff'd](#), 517 U.S. 830, 116 S. Ct. 1813, 135 L. Ed. 2d 113 (1996); [Boykin v. Bergesen D.Y. A/S](#), 835 F. Supp. 274 (E.D. Va. 1993), judgment [aff'd](#), 73 F.3d 539 (4th Cir. 1996).
- 6 [Witco Chemical Corp. v. M/V Miss Carolyn](#), 426 F. Supp. 373 (W.D. La. 1977).

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## § 183. Award of prejudgment interest

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### West's Key Number Digest

West's Key Number Digest, [Interest](#) 39(2.25)

### A.L.R. Library

[Recovery of prejudgment interest in actions under the Federal Employers' Liability Act or Jones Act, 80 A.L.R. Fed. 185](#)

[Award of prejudgment interest in admiralty suits, 34 A.L.R. Fed. 126](#)

The general rule is that prejudgment interest should be awarded in maritime cases, subject to the limited exception for "peculiar" or "exceptional" circumstances,<sup>1</sup> although a claim for prejudgment interest under the Jones Act may be denied.<sup>2</sup> The existence of a legitimate difference of opinion on the issue of liability<sup>3</sup> and equitable considerations<sup>4</sup> are not extraordinary circumstances that can justify denying prejudgment interest.

The following circumstances may result in the denial of prejudgment interest:

- damages that are not certain prior to judgment<sup>5</sup>

- the plaintiff makes a bad faith estimate of its damages precluding settlement<sup>6</sup>
  - the plaintiff did not sustain any actual damages<sup>7</sup>
  - the plaintiff has delayed in bringing the action<sup>8</sup>
  - the plaintiff has disregarded the court's scheduling order during discovery<sup>9</sup>
- Furthermore, where the award of prejudgment interest would be punitive rather than compensatory, a request for prejudgment interest will be denied.<sup>10</sup>

**Observation:**

Upon review, a district court's decision to deny prejudgment interest under the peculiar or exceptional circumstances exception is reviewed for abuse of discretion.<sup>11</sup>

The rate of prejudgment interest that should be awarded in an admiralty case is the prime rate during the relevant period.<sup>12</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Recovery request by maritime lienholder of abandoned vessel of prejudgment interest at 18% rate, which was interest rate provided by contract between lienholder and vessel owner, was excessive, for purposes of determining compensation lienholder was entitled to for its care of vessel, where lienholder did not explain why 18% prejudgment interest rate was necessary to compensate it for its loss, contract vessel did not bind vessel, and agreement for certain rate did not establish that rate was accurate reflection of lienholder's loss. [46 U.S.C.A. § 31342. Robbie's of Key West v. M/V Komedie III, 470 F. Supp. 3d 1264 \(S.D. Fla. 2020\).](#)

Generally, district courts have broad discretion in determining both the interest rate to be used and the date from which the calculations will run for prejudgment interest in admiralty cases. [Bank of the West v. Sailing Yacht Serendipity, 101 F. Supp. 3d 238 \(E.D. N.Y. 2015\).](#)

Under admiralty law, salvor of historic shipwreck was not entitled to award of prejudgment interest on salvage expenses, upon grant of salvage award in amount of 100% of fair market value of gold and artifacts recovered, since liberal salvage award was sufficient to compensate salvor, including for any temporary loss of use of funds employed to finance salvage efforts. [Recovery Limited Partnership v. Wrecked and Abandoned Vessel, 204 F. Supp. 3d 864 \(E.D. Va. 2016\).](#)

[END OF SUPPLEMENT]

Footnotes

- 1 [City of Milwaukee v. Cement Div., Nat. Gypsum Co., 515 U.S. 189, 115 S. Ct. 2091, 132 L. Ed. 2d 148 \(1995\).](#)
- 2 [Martin v. Harris, 560 F.3d 210 \(4th Cir. 2009\); Seymore v. Penn Maritime Inc., 281 Fed. Appx. 300 \(5th Cir. 2008\).](#)  
[As to the Jones Act, generally, see Am. Jur. 2d, Federal Employers' Liability and Compensation Acts §§ 29 to 47.](#)
- 3 [City of Milwaukee v. Cement Div., Nat. Gypsum Co., 515 U.S. 189, 115 S. Ct. 2091, 132 L. Ed. 2d 148 \(1995\).](#)
- 4 [In re Signal Intern., LLC, 579 F.3d 478 \(5th Cir. 2009\); Great Lakes Dredge & Dock Co. v. City of Chicago, 260 F.3d 789 \(7th Cir. 2001\).](#)
- 5 [First Union Commercial Corp. v. GATX Capital Corp., 411 F.3d 551 \(4th Cir. 2005\).](#)
- 6 [Delaware River & Bay Authority v. Kopacz, 584 F.3d 622 \(3d Cir. 2009\).](#)
- 7 [Delaware River & Bay Authority v. Kopacz, 584 F.3d 622 \(3d Cir. 2009\).](#)
- 8 [Jones v. Spentonbush-Red Star Co., 155 F.3d 587 \(2d Cir. 1998\); Delaware River & Bay Authority v. Kopacz, 584 F.3d 622 \(3d Cir. 2009\).](#)
- 9 [Jones v. Spentonbush-Red Star Co., 155 F.3d 587 \(2d Cir. 1998\).](#)
- 10 [Arkansas State Highway Com'n v. Arkansas River Co., 271 F.3d 753 \(8th Cir. 2001\).](#)
- 11 [In re Signal Intern., LLC, 579 F.3d 478 \(5th Cir. 2009\).](#)
- 12 [Sunderland Marine Mut. Ins. Co., Ltd. v. Weeks Marine Const. Co., 338 F.3d 1276 \(11th Cir. 2003\).](#)

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##### (2) Forfeiture Actions in Rem

## § 184. Motion to suppress use of property as evidence

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### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  72

In a forfeiture action in rem arising from a federal statute, if the defendant property was seized, a party with standing to contest the lawfulness of the seizure may move to suppress use of the property as evidence. Suppression does not affect forfeiture of the property based on independently derived evidence.<sup>1</sup>

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### Footnotes

<sup>1</sup> Supplemental Admiralty and Maritime Claims Rule G(8)(a).

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##### (2) Forfeiture Actions in Rem

### § 185. Motion to dismiss; motion to strike

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  72

#### Forms

Forms relating to motion to dismiss or strike: see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure [\[Westlaw® Search Query\]](#)

In a forfeiture action in rem arising from a federal statute, a claimant who establishes standing to contest forfeiture may move to dismiss the action under [Fed. R. Civ. P. 12\(b\)](#).<sup>1</sup> In addition, under appropriate actions, the complaint may not be dismissed on the ground that the government did not have adequate evidence at the time the complaint was filed to establish the forfeitability of the property.<sup>2</sup>

At any time before trial, the government may move to strike a claim or answer for failing to comply with the requirements for responsive pleadings<sup>3</sup> and special interrogatories<sup>4</sup> or because the claimant lacks standing.<sup>5</sup> The motion must be decided before any motion by the claimant to dismiss the action and may be presented as a motion for judgment on the pleadings or as a motion to determine after a hearing or by summary judgment whether the claimant can carry the burden of establishing standing by a preponderance of the evidence.<sup>6</sup>

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Footnotes

- 1 Supplemental Admiralty and Maritime Claims Rule G(8)(b)(i).
- 2 Supplemental Admiralty and Maritime Claims Rule G(8)(b)(ii).  
As to the sufficiency of a complaint, see §§ [122](#), [123](#).
- 3 [§ 153](#).
- 4 [§ 124](#).
- 5 Supplemental Admiralty and Maritime Claims Rule G(8)(c)(i).
- 6 Supplemental Admiralty and Maritime Claims Rule G(8)(c)(ii).

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##### (2) Forfeiture Actions in Rem

### § 186. Motion to mitigate forfeiture under Excessive Fines Clause

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  72

In a forfeiture action in rem arising from a federal statute, a claimant may seek to mitigate a forfeiture under the Excessive Fines Clause of the [U.S. Const. Amends. VIII](#) by a motion for summary judgment or by motion made after entry of a forfeiture judgment if the claimant has pleaded the defense under [Fed. R. Civ. P. 8](#) and the parties have had the opportunity to conduct civil discovery on the defense.<sup>1</sup>

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#### Footnotes

<sup>1</sup> Supplemental Admiralty and Maritime Claims Rule G(8)(e).

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### § 187. Generally

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#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  80

#### Law Reviews and Other Periodicals

Engerrand, [Admiralty Jury Trials Reconsidered](#), 12 Loy. Mar. L.J. 73 (Winter 2013)

The general rule is that there is no constitutional right to a jury trial in an admiralty case.<sup>1</sup>

#### Practice Tip:

In a forfeiture action in rem arising from a federal statute, trial is to the court unless any party demands a trial by jury under [Fed. R. Civ. P. 38](#).<sup>2</sup>

Although the Seventh Amendment neither requires nor forbids jury trials in admiralty cases,<sup>3</sup> and no statute of Congress or rule of procedure forbids jury trials in such cases,<sup>4</sup> a jury demand is traditionally disallowed except where an admiralty claim is tried at law by way of the saving to suitors clause<sup>5</sup> or by the authority of federal statute.<sup>6</sup> Under the saving to suitors clause in the admiralty jurisdiction statute, plaintiffs may pursue state claims in admiralty cases as long as the district court also has diversity jurisdiction, and this preserves whatever jury trial right exists with respect to state claims.<sup>7</sup> However, even where a defendant retains the right to a jury trial on common-law counterclaims after the plaintiff's designation of the action as arising in admiralty,<sup>8</sup> the defendant waives that right when designating the counterclaims as "in admiralty" with no accompanying demand for a jury trial.<sup>9</sup>

The plaintiff in a nonadmiralty action cannot be deprived of a jury trial by the defendant's action in setting up an admiralty defense as the court can decide the admiralty defense while the remainder of the case is tried to a jury.<sup>10</sup>

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#### Footnotes

- 1 [Concordia Co., Inc. v. Panek](#), 115 F.3d 67, 37 Fed. R. Serv. 3d 1079 (1st Cir. 1997); [Mala v. Crown Bay Marina, Inc.](#), 58 V.I. 691, 704 F.3d 239 (3d Cir. 2013); [In re Lockheed Martin Corp.](#), 503 F.3d 351, 68 Fed. R. Serv. 3d 1598 (4th Cir. 2007).
- 2 [Supplemental Admiralty and Maritime Claims Rule G\(9\)](#).
- 3 [Granfinanciera, S.A. v. Nordberg](#), 492 U.S. 33, 109 S. Ct. 2782, 106 L. Ed. 2d 26, 18 Fed. R. Serv. 3d 435 (1989); [Fitzgerald v. U. S. Lines Co.](#), 374 U.S. 16, 83 S. Ct. 1646, 10 L. Ed. 2d 720, 7 Fed. R. Serv. 2d 774 (1963).
- 4 [Fitzgerald v. U. S. Lines Co.](#), 374 U.S. 16, 83 S. Ct. 1646, 10 L. Ed. 2d 720, 7 Fed. R. Serv. 2d 774 (1963).
- 5 [Concordia Co., Inc. v. Panek](#), 115 F.3d 67, 37 Fed. R. Serv. 3d 1079 (1st Cir. 1997); [In re Lockheed Martin Corp.](#), 503 F.3d 351, 68 Fed. R. Serv. 3d 1598 (4th Cir. 2007).  
As to jurisdiction under the saving to suitors clause, see §§ 80 to 84.
- 6 § 191.
- 7 [Mala v. Crown Bay Marina, Inc.](#), 58 V.I. 691, 704 F.3d 239 (3d Cir. 2013); [Sphere Drake Ins. PLC v. J. Shree Corp.](#), 184 F.R.D. 258 (S.D. N.Y. 1999).
- 8 § 189.
- 9 [Concordia Co., Inc. v. Panek](#), 115 F.3d 67, 37 Fed. R. Serv. 3d 1079 (1st Cir. 1997).
- 10 [Famiano v. Enyeart](#), 398 F.2d 661, 12 Fed. R. Serv. 2d 924 (7th Cir. 1968).  
As to the advisory nature of a jury where both admiralty and nonadmiralty claims are tried, see § 190.

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##### b. Jury Trial

### § 188. Jury trial under alternative jurisdictional ground

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#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  80

If in an admiralty case there exists a separate and independent basis for federal jurisdiction supporting a claim for damages at law, the court must honor a demand for a jury trial.<sup>1</sup> For example, an alternative jurisdictional ground may be diversity of citizenship.<sup>2</sup>

Where nonadmiralty claims and admiralty claims are so interrelated as to require trial by a single fact finder, and each rests on an independent basis sufficient to support federal jurisdiction, the constitutionally protected right to a jury trial of civil claims outweighs the tradition of nonjury trials in admiralty.<sup>3</sup> Thus, the right to a jury trial applies when nonadmiralty claims are joined with admiralty claims to form a hybrid admiralty-civil case.<sup>4</sup>

#### CUMULATIVE SUPPLEMENT

##### Cases:

While tort claims brought by estate of cruise ship passenger were maritime in nature, there was a separate and independent basis for federal jurisdiction under the diversity statute, and thus, court would honor estate's timely demand for a jury trial. [28 U.S.C.A. § 1332. Santos v. America Cruise Ferries, Inc., 100 F. Supp. 3d 96 \(D.P.R. 2015\).](#)

**[END OF SUPPLEMENT]**

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Footnotes

- 1 [Parsell v. Shell Oil Co.](#), 421 F. Supp. 1275 (D. Conn. 1976), *aff'd*, 573 F.2d 1289 (2d Cir. 1977).
- 2 [Atlantic & Gulf Stevedores, Inc. v. Ellerman Lines, Limited](#), 369 U.S. 355, 82 S. Ct. 780, 7 L. Ed. 2d 798, 5 Fed. R. Serv. 2d 757 (1962).  
As to diversity of citizenship as a ground for jurisdiction, see 28 U.S.C.A. § 1332.
- 3 [Ingram River Equipment, Inc. v. Pott Industries, Inc.](#), 816 F.2d 1231, 3 U.C.C. Rep. Serv. 2d 977 (8th Cir. 1987); [Clark v. Solomon Nav., Ltd.](#), 631 F. Supp. 1275 (S.D. N.Y. 1986); [Rose v. Dredge Enterprise](#), 120 F.R.D. 39 (E.D. N.C. 1988).
- 4 [Boston Ship Repair, LLC v. Starr Indem. & Liability Co.](#), 2014 WL 644731 (D. Mass. 2014).

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### § 189. Effect of designation as maritime claim

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#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  80

#### A.L.R. Library

[Propriety of consolidation for trial of actions for personal injuries, death, or property damages arising out of same accident, 68 A.L.R.2d 1372](#)

There is no right to a jury trial where the complaint contains a statement identifying the claim as an admiralty or maritime claim even though diversity jurisdiction exists as well.<sup>1</sup> Similarly, if a plaintiff designates a claim as maritime, the saving to suitors clause does not permit a defendant to trump that designation and demand a jury trial.<sup>2</sup> However, the assertion of an admiralty claim in the same complaint as a claim premised on diversity jurisdiction does not preclude a jury trial on the nonadmiralty claim where the decision to combine the claims into one single action does not constitute an election to proceed in admiralty alone without the right to a jury trial.<sup>3</sup> Moreover, a plaintiff's designation of a claim as a maritime claim cannot trump the defendant's Seventh Amendment right to a jury trial on a legal counter- or cross-claim.<sup>4</sup>

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Footnotes

- 1 [Luera v. M/V Alberta](#), 635 F.3d 181 (5th Cir. 2011).  
As to the election to treat a claim as one in admiralty, see § 118.
- 2 [In re Lockheed Martin Corp.](#), 503 F.3d 351, 68 Fed. R. Serv. 3d 1598 (4th Cir. 2007).  
As to jurisdiction under the saving to suitors clause, see §§ 80 to 84.
- 3 [Luera v. M/V Alberta](#), 635 F.3d 181 (5th Cir. 2011).
- 4 [In re Lockheed Martin Corp.](#), 503 F.3d 351, 68 Fed. R. Serv. 3d 1598 (4th Cir. 2007); [Wilmington Trust v. U.S. Dist. Court for Dist. of Hawaii](#), 934 F.2d 1026, 19 Fed. R. Serv. 3d 100 (9th Cir. 1991).

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### § 190. Advisory jury

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  80

Where admiralty and nonadmiralty claims are to be tried together, the entire case may be tried with the jury acting only in an advisory capacity for the part of the action brought solely in admiralty.<sup>1</sup>

A jury impaneled to hear maritime claims in a case in which admiralty jurisdiction is invoked, but not federal question or diversity jurisdiction, is an advisory jury, not a jury of right.<sup>2</sup> Thus, whatever value the views of an advisory jury may have in the trial of a general maritime claim before the court is diminished by the rule that the court is required to make its own findings of fact and conclusions of law, which alone form the basis of an appeal.<sup>3</sup>

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#### Footnotes

- <sup>1</sup> [Favaloro v. S/S Golden Gate](#), 687 F. Supp. 475 (N.D. Cal. 1987).
- <sup>2</sup> [In re Incident Aboard D/B Ocean King](#), 758 F.2d 1063 (5th Cir. 1985).
- <sup>3</sup> [Skoldberg v. Villani](#), 601 F. Supp. 981 (S.D. N.Y. 1985).  
As to when a claimant in an admiralty action may demand a jury trial as a matter of right, see [§ 187](#).

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### § 191. Great Lakes cases

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  80

By statute, either party has the right to demand a jury trial in admiralty cases relating to a contract or tort arising upon or concerning any vessel of 20 tons or more, enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between places in different states upon the lakes and navigable waters connecting such lakes.<sup>1</sup> The statute is intended to cover the Great Lakes.<sup>2</sup> If either vessel involved in the case fits the definition set forth in the statute, then either party has the right to demand a jury trial.<sup>3</sup> Since the statute applies only to vessels engaged in interstate commerce and navigation, there is no right to a jury trial where the vessel in question was engaged in commerce within a single state<sup>4</sup> or was being used as a floating warehouse while laid up for the winter.<sup>5</sup> And, since under the statute there is a right to a jury trial only as to contract or tort matters, parties may obtain a jury trial in an unseaworthiness case<sup>6</sup> but not in an action for maintenance or cure<sup>7</sup> or in matters of pure salvage.<sup>8</sup>

#### Observation:

When the Great Lakes statute<sup>9</sup> conflicts with a unique statutory right deeply founded in admiralty and equity, such as the right to bring a limitations of liability proceeding, the traditional admiralty rule will be followed and there will be no jury trial.<sup>10</sup>

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Footnotes

- 1 28 U.S.C.A. § 1873.
- 2 The Western States, 159 F. 354 (C.C.A. 2d Cir. 1908); The Frank J. Fobert, 32 F. Supp. 214 (W.D. N.Y. 1940); In re Great Lakes Towing Co., 395 F. Supp. 810 (N.D. Ohio 1974).
- 3 The Erie Belle, 20 F. 63 (E.D. Mich. 1883).
- 4 The Frank J. Fobert, 32 F. Supp. 214 (W.D. N.Y. 1940); The City of Toledo, 73 F. 220 (N.D. Ohio 1896).
- 5 Krolczyk v. Waterways Nav. Co., 151 F. Supp. 873 (E.D. Mich. 1957).
- 6 Michalic v. Cleveland Tankers, Inc., 364 U.S. 325, 81 S. Ct. 6, 5 L. Ed. 2d 20 (1960).
- 7 Miller v. Standard Oil Co., 199 F.2d 457 (7th Cir. 1952).
- 8 The Erie Belle, 20 F. 63 (E.D. Mich. 1883).
- 9 28 U.S.C.A. § 1873.
- 10 In re Great Lakes Towing Co., 395 F. Supp. 810 (N.D. Ohio 1974).

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## 2 Am. Jur. 2d Admiralty § 192

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##### 9. Trial

##### b. Jury Trial

### § 192. Jones Act claim joined with traditional admiralty claim

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  80

#### A.L.R. Library

[Validity, Construction, and Application of Jones Act, 46 App. U.S.C.A. s688—Supreme Court Cases, 170 A.L.R. Fed. 587](#)

Generally, if a traditional admiralty claim is joined with a claim under the Jones Act, as to which there is a right to trial by jury,<sup>1</sup> both claims must be submitted to a jury when both arise out of one set of facts.<sup>2</sup> There is a right to a jury trial in such a case only if the Jones Act venue requirements are met.<sup>3</sup>

#### Practice Tip:

A defendant in a federal maintenance and cure action may protect saving to suitors rights by filing a Jones Act counterclaim in federal court, and thus, a seaman would be entitled to a jury trial on the maintenance and cure claim and the Jones Act claim even though the maintenance and cure claim is within the court's admiralty jurisdiction and otherwise would not be triable to a jury.<sup>4</sup>

A claimant remains entitled to a jury trial of a Jones Act claim where another party joins a limitation of liability proceeding in admiralty where the claimant effectively concedes the right to have the other proceeding determined by the court, waives res judicata relevant to the issue of limited liability based upon any judgment obtained in the jury trial, and does not object to the sufficiency of the fund or the method of computing it.<sup>5</sup> However, a claimant in a limitation action may not obtain consecutive jury trials in state and federal courts through the device of characterizing the claim as predicated on the Act.<sup>6</sup>

There may be an exception to the general rule where the plaintiff asserts the same right both in a Jones Act in personam action and an admiralty in rem action; the plaintiff may have to elect whether to proceed under the Jones Act with a jury or with the in rem action without a jury.<sup>7</sup> If a Jones Act claim is joined with a traditional admiralty claim and the Jones Act claim is settled or is disposed of by way of a directed verdict, the court may dismiss the jury and decide the traditional admiralty issues itself.<sup>8</sup> However, at least in the directed verdict situation, it is also proper for the court to submit the remaining traditional admiralty claim to the jury.<sup>9</sup>

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#### Footnotes

- 1 46 U.S.C.A. § 30104, discussed further in *Am. Jur. 2d, Federal Employers' Liability and Compensation Acts* §§ 29 to 47.
- 2 *Fitzgerald v. U. S. Lines Co.*, 374 U.S. 16, 83 S. Ct. 1646, 10 L. Ed. 2d 720, 7 Fed. R. Serv. 2d 774 (1963); *Rose v. Dredge Enterprise*, 120 F.R.D. 39 (E.D. N.C. 1988).
- 3 *Haskins v. Point Towing Co.*, 395 F.2d 737, 12 Fed. R. Serv. 2d 918 (3d Cir. 1968); *Crookham v. Muick*, 246 F. Supp. 288 (W.D. Pa. 1965).  
As to the venue requirements of the Jones Act, see *Am. Jur. 2d, Federal Employers' Liability and Compensation Acts* § 29.
- 4 *Royal Caribbean Cruises, Ltd. v. Whitefield ex rel. Martinez*, 664 F. Supp. 2d 1270 (S.D. Fla. 2009).
- 5 *Newton v. Shipman*, 718 F.2d 959 (9th Cir. 1983).
- 6 *Complaint of Consolidation Coal Co.*, 123 F.3d 126, 47 Fed. R. Evid. Serv. 815 (3d Cir. 1997).
- 7 *Johnson v. Venezuelan Line S. S. Co.*, 314 F. Supp. 1403 (E.D. La. 1970).
- 8 *Mahramas v. American Export Isbrandtsen Lines, Inc.*, 475 F.2d 165 (2d Cir. 1973); *Hickman v. Ohio Barge Line, Inc.*, 376 F. Supp. 1092 (W.D. Pa. 1974).
- 9 *Simko v. C & C Marine Maintenance Co.*, 594 F.2d 960 (3d Cir. 1979).

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### § 193. Generally

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#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  [121](#) to [127](#)

#### Forms

Forms relating to damages, interest, and costs, generally, see Am. Jur. Pleading and Practice Forms, Admiralty[[Westlaw® Search Query](#)]

Except as otherwise provided by an act of Congress, the allowance and taxation of costs in admiralty and maritime cases is as prescribed by rules promulgated by the Supreme Court.<sup>1</sup> Accordingly, absent an express provision to the contrary in either a federal statute, the Federal Rules of Civil Procedure or a court order, costs other than attorney's fees should be allowed to the prevailing party, but costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law.<sup>2</sup> The statutory requirement that costs be prescribed by Supreme Court rule unless otherwise provided by federal statute<sup>3</sup> does not prohibit the right to tax as costs any unnecessary expenses as set forth in a statute<sup>4</sup> governing counsel's liability for excessive costs.<sup>5</sup>

By providing for recovery of both costs and attorney's fees to the prevailing employer if the court finds a suit was frivolous or brought in bad faith, the statute governing suits by seamen who allege discrimination for refusing to perform tasks they consider unsafe supersedes rather than merely supplements [Fed. R. Civ. P. 54\(d\)](#).<sup>6</sup>

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Footnotes

- 1                   28 U.S.C.A. § 1925.
- 2                   Fed. R. Civ. P. 54(d)(1).  
                    As to the prepayment of costs and security in a nonforfeiture maritime action, see § 132.  
                    As to release of the res upon the payment of costs in a nonforfeiture maritime action, see § 160.  
                    As to costs and expenses, generally, see Am. Jur. 2d, Costs §§ 1 et seq.
- 3                   28 U.S.C.A. § 1925.
- 4                   28 U.S.C.A. § 1927.
- 5                   Molinos v. The Rio Grande, 129 F. Supp. 25 (E.D. Va. 1955).
- 6                   Gwin v. American River Transp. Co., 482 F.3d 969 (7th Cir. 2007), referring to 46 U.S.C.A. § 2114(b).

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### § 194. Expert witness fees

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  [121](#) to [127](#)

By virtue of the "except as otherwise provided by act of Congress" clause of the statute governing the assessment of costs in an admiralty action,<sup>1</sup> where the provisions of another statute have been construed to prevent the taxation of expert witness fees as costs, that other statute is applicable to admiralty cases.<sup>2</sup>

A federal court sitting in admiralty may not apply a state statute governing expert witness fees which directly contravenes the federal statutes<sup>3</sup> governing taxation of witness fees as costs in maritime cases.<sup>4</sup>

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#### Footnotes

- <sup>1</sup> 28 U.S.C.A. § 1925, discussed in § 193.
- <sup>2</sup> *Carlson v. Palmer*, 472 F. Supp. 396, 27 Fed. R. Serv. 2d 914 (D. Del. 1979) (interpreting 28 U.S.C.A. § 1821).
- <sup>3</sup> 28 U.S.C.A. §§ 1821, 1925.
- <sup>4</sup> *Carlson v. Palmer*, 472 F. Supp. 396, 27 Fed. R. Serv. 2d 914 (D. Del. 1979).

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## 2 Am. Jur. 2d Admiralty § 195

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##### c. Costs and Fees

### § 195. Attorney's fees; court costs; fees for preparation of briefs

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  [121](#) to [127](#)

The prevailing party in an admiralty case is not entitled to recover attorney's fees as a matter of course.<sup>1</sup> Attorney's fees awards in admiralty suits are discretionary and ordinarily require a finding of bad faith.<sup>2</sup> Attorney's fees may also be awarded where they are provided by the statute governing the claim<sup>3</sup> or where there is a contract providing for the indemnification of attorney's fees.<sup>4</sup> However, attorney's fees and costs may be awarded in a civil case that is decided under the saving to suitors jurisdiction.<sup>5</sup>

In considering requests for attorney's fees in admiralty cases, courts must look to the federal law of admiralty to determine if fees may be awarded since admiralty is a body of law which is peculiarly federal in nature.<sup>6</sup> Thus, as with expert witness fees,<sup>7</sup> it would be inappropriate in a case applying federal substantive admiralty law to award attorney's fees pursuant to a state statute which directly conflicts with federal admiralty law.<sup>8</sup>

Attorney's fees incurred in defending maritime actions may be assessed against the parties ultimately found to be liable<sup>9</sup> although it is recognized that attorney's fees, generally, are not awarded in admiralty cases, except in certain circumstances, as in an exception allowing attorney's fees to an indemnitee as against his or her indemnitor, not as attorney's fees qua attorney's fees but as part of the reasonable expenses incurred in defending against a claim.<sup>10</sup> Similarly, a seaman may recover attorney's fees as damages, rather than as costs, in a suit in admiralty against a shipowner who willfully and persistently defaults in the payment of a just claim, thereby requiring the seaman to bring suit to enforce the claim.<sup>11</sup>

Docket fees for attorneys and proctors in admiralty cases are taxed as provided by federal statute.<sup>12</sup>

In admiralty appeals, the court is statutorily limited as to the amount that it may allow as costs for printing the briefs of the successful party.<sup>13</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

In admiralty cases, the bad faith inquiry used to determine if attorney fee award is warranted to prevailing party is primarily focused on the conduct and motive of a party, rather than on the validity of the case. [JSM Marine LLC v. Gaughf](#), 407 F. Supp. 3d 1358 (S.D. Ga. 2019).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 [Misener Marine Const., Inc. v. Norfolk Dredging Co.](#), 594 F.3d 832 (11th Cir. 2010).
- 2 [New York Marine and General Ins. Co. v. Lafarge North America, Inc.](#), 599 F.3d 102 (2d Cir. 2010); [Madeja v. Olympic Packers, LLC.](#), 310 F.3d 628 (9th Cir. 2002); [Misener Marine Const., Inc. v. Norfolk Dredging Co.](#), 594 F.3d 832 (11th Cir. 2010).
- 3 [Misener Marine Const., Inc. v. Norfolk Dredging Co.](#), 594 F.3d 832 (11th Cir. 2010).
- 4 [Misener Marine Const., Inc. v. Norfolk Dredging Co.](#), 594 F.3d 832 (11th Cir. 2010).
- 5 [Hughes v. Foster Wheeler Co.](#), 932 P.2d 784 (Alaska 1997).  
As to saving to suitors jurisdiction, see §§ 80 to 84.
- 6 [Ocean Barge Transport Co. v. Hess Oil Virgin Islands Corp.](#), 21 V.I. 87, 598 F. Supp. 45 (D.V.I. 1984), judgment aff'd, 760 F.2d 259 (3d Cir. 1985) and judgment aff'd, 760 F.2d 259 (3d Cir. 1985) and judgment aff'd, 760 F.2d 257 (3d Cir. 1985).
- 7 § 194.
- 8 [Sosebee v. Rath](#), 893 F.2d 54 (3d Cir. 1990) (finding that a Virgin Island's statute which did not require a showing of bad faith directly contradicted the federal statute).
- 9 [Ohio River Co. v. Great Lakes Carbon Corp.](#), 714 F.2d 65 (8th Cir. 1983).
- 10 [City of Boston v. SS Texaco Texas](#), 599 F. Supp. 1132 (D. Mass. 1984), decision aff'd, 773 F.2d 1396 (1st Cir. 1985).
- 11 [Vaughan v. Atkinson](#), 369 U.S. 527, 82 S. Ct. 997, 8 L. Ed. 2d 88 (1962).
- 12 28 U.S.C.A. § 1923(a).
- 13 28 U.S.C.A. § 1923(c).

## 2 Am. Jur. 2d Admiralty § 196

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##### c. Costs and Fees

### § 196. Seamen's costs and fees; exemption from prepayment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  121 to 127

In all courts of the United States, seamen have a statutory right to institute and prosecute suits for wages or salvage or for the enforcement of laws enacted for their health and safety without prepaying fees or costs or furnishing security therefor.<sup>1</sup> A local district court rule which would otherwise allow the court to require the plaintiff to post security for costs may not be applied if it conflicts with this statutory right.<sup>2</sup> The statute applies to alien seamen, as well as to citizens.<sup>3</sup> The term "seamen" includes a stevedore employed on a ship in navigable waters,<sup>4</sup> and the master of a tug going aboard a tow to inspect damage,<sup>5</sup> but does not include a longshoreman,<sup>6</sup> an employee of a private contractor,<sup>7</sup> or a rigger employed by a shipyard corporation.<sup>8</sup> Although the statute is to be liberally construed,<sup>9</sup> it does not apply to suits by heirs or representatives to recover for the death of a seaman.<sup>10</sup> Furthermore, the mere fact that a plaintiff is a seaman within the meaning of the statute<sup>11</sup> does not convert the dispute into a maritime case so as to confer admiralty jurisdiction on a court which otherwise would not have it.<sup>12</sup>

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#### Footnotes

- <sup>1</sup> 28 U.S.C.A. § 1916.  
As to whether this statute is applicable when a seaman is asked to make a deposit to cover the costs of keeping seized property, see § 132.
- <sup>2</sup> *Clay v. Overseas Carriers Corp.*, 61 F.R.D. 325 (E.D. Pa. 1973).
- <sup>3</sup> *The Memphian*, 245 F. 484 (D. Mass. 1917).

- 4 Fletcher v. Lancaster S.S. Corporation, 11 F. Supp. 704 (S.D. N.Y. 1935).  
5 The Burns Bros. No. 31, 29 F.2d 855 (E.D. N.Y. 1928).  
6 Lowicki v. Skibs A. S. Herstein, 182 F. Supp. 585 (D. Md. 1960); Borselli v. U.S. Lines Co., 74 F. Supp. 822 (S.D. N.Y. 1947); Manson v. Weyerhaeuser S. S. Co., 229 F. Supp. 569 (E.D. Pa. 1964).  
7 Godfrey v. U.S., 248 F. Supp. 273 (S.D. Cal. 1965).  
8 Fine v. U.S., 66 F. Supp. 768 (E.D. N.Y. 1946).  
9 Grant v. U.S. Shipping Board Emergency Fleet Corporation, 24 F.2d 812 (C.C.A. 2d Cir. 1928).  
10 Foster v. U.S., 46 F.2d 359 (E.D. La. 1930).  
11 28 U.S.C.A. § 1916.  
12 Clinton v. West Coast Local No. 90 Masters, Mates and Pilots Union of America, 161 F. Supp. 177 (N.D. Cal. 1955).

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##### c. Costs and Fees

### § 197. Seamen's costs and fees; exemption from prepayment—Particular types of costs and fees affected

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  121 to 127

For purposes of the statute exempting seamen from the prepayment of fees and costs,<sup>1</sup> the term "fees" refers to a party's own expenses in litigation, and the term "costs" refers to an allowance which a court sometimes awards to a prevailing party and against the losing party.<sup>2</sup> While neither the language of nor the policy embodied in the statute requires that a defendant pay the plaintiff's litigation expenses, such as the costs of a deposition, as they arise,<sup>3</sup> the statute does preclude a court from ordering the prepayment by plaintiff of the defendant's litigation costs and the posting of security for costs.<sup>4</sup> A court reporter transcript fee is not within the statutory prepayment exemption and is subject to a requirement of prepayment.<sup>5</sup>

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#### Footnotes

- 1 28 U.S.C.A. § 1916.
- 2 *Clay v. Overseas Carriers Corp.*, 61 F.R.D. 325 (E.D. Pa. 1973).
- 3 *Villanueva v. Gulf Oil Corp.*, 262 F. Supp. 492 (E.D. Pa. 1967).
- 4 *Walsh v. Marine Nav. Co.*, 34 F.R.D. 25, 8 Fed. R. Serv. 2d 30B.41, Case 1 (S.D. N.Y. 1963); *Clay v. Overseas Carriers Corp.*, 61 F.R.D. 325 (E.D. Pa. 1973).
- 5 *Adamowski v. Bard*, 193 F.2d 578 (3d Cir. 1952).

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### § 198. Seamen's costs and fees; exemption from prepayment—Costs and fees upon disposition of case

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  121 to 127

The fact that a statute excuses seamen from prepayment of certain costs and fees<sup>1</sup> does not mean that the seaman will at no point be liable for them; costs may be taxed and made a lien on any judgment entered in favor of a plaintiff seaman.<sup>2</sup> Furthermore, costs may be taxed against a seaman who loses the suit<sup>3</sup> and may be collected by execution on a judgment.<sup>4</sup> If a claim is compromised and settled and an amount paid to the seaman, the seaman may be required to pay costs;<sup>5</sup> a court may impose payment of costs as a condition of the right to take a nonsuit without prejudice.<sup>6</sup> The court has discretion to stay a new trial until such time as the plaintiff pays the defendant the costs awarded the defendant in a previous action or appeal involving the same claim.<sup>7</sup>

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#### Footnotes

- <sup>1</sup> 28 U.S.C.A. § 1916.
- <sup>2</sup> *Grant v. U.S. Shipping Board Emergency Fleet Corporation*, 24 F.2d 812 (C.C.A. 2d Cir. 1928); *The Memphian*, 245 F. 484 (D. Mass. 1917).
- <sup>3</sup> *Hugney v. Consolidation Coal Co.*, 59 F.R.D. 258, 17 Fed. R. Serv. 2d 1440 (W.D. Pa. 1973).
- <sup>4</sup> *Grant v. U.S. Shipping Board Emergency Fleet Corporation*, 24 F.2d 812 (C.C.A. 2d Cir. 1928).
- <sup>5</sup> *Stalker v. Southeastern Oil Del.*, 103 F. Supp. 436 (D. Del. 1951).
- <sup>6</sup> *Theodorakis v. Xilas*, 200 F.2d 107 (4th Cir. 1952).



7 [Gregory v. Dimock](#), 286 F.2d 717 (2d Cir. 1961); [Gaussen v. United Fruit Co.](#), 317 F. Supp. 813 (S.D. N.Y. 1970).

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## 2 Am. Jur. 2d Admiralty § 199

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#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading

##### 10. Appeal and Review


##### a. Review of District Court Orders and Decisions in the Court of Appeals

##### (1) In General

## § 199. Notice of appeal

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  102 to 112

The time to appeal a decision in an admiralty action is the same as the time allotted to appeal a decision in a federal civil case.<sup>1</sup> Thus, a notice of appeal in an admiralty proceeding must be filed within 30 days from the entry of the order or judgment appealed unless the matter is a prize case, for which separate provision is made.<sup>2</sup>

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#### Footnotes

- <sup>1</sup> Fed. R. App. P. 4, discussed, generally, at [Am. Jur. 2d, Appellate Review § 252](#).
- <sup>2</sup> [Curacao Drydock Co., \(N.Y. Curacaoose Dok Maatschappij\) v. M/V Akritas](#), 710 F.2d 204, 37 Fed. R. Serv. 2d 11 (5th Cir. 1983).  
As to the applicability of this rule when interlocutory rulings are appealed as part of the final judgment, see [§ 206](#).

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## 2 Am. Jur. 2d Admiralty § 200

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#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading

##### 10. Appeal and Review


###### a. Review of District Court Orders and Decisions in the Court of Appeals

###### (1) In General

## § 200. Necessity of surety joining in appeal

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  102 to 112

If a surety provides a stipulation to allow the claimant of a vessel to obtain its release,<sup>1</sup> a decree which awards damages against the claimant and provides that if the decree is not satisfied then execution may issue against both the claimant and the surety is not a joint decree, and on appeal, the surety is not a necessary party.<sup>2</sup> In such a case, the claimant may appeal without notice to the surety or severance.<sup>3</sup>

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#### Footnotes

- 1 28 U.S.C.A. § 2464.  
As to providing security for the release of a vessel, see §§ 155 to 159.
- 2 Elliot v. Lombard, 292 U.S. 139, 54 S. Ct. 637, 78 L. Ed. 1175 (1934).
- 3 Elliot v. Lombard, 292 U.S. 139, 54 S. Ct. 637, 78 L. Ed. 1175 (1934).

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## 2 Am. Jur. 2d Admiralty § 201

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#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading

##### 10. Appeal and Review

###### a. Review of District Court Orders and Decisions in the Court of Appeals

###### (1) In General

## § 201. Stay of proceedings

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  102 to 112, 114

### Forms

Forms relating to stay of proceedings, generally, see Am. Jur. Pleading and Practice Forms, Admiralty [[Westlaw® Search Query](#)]

If in an admiralty case an appeal is taken of an interlocutory decree,<sup>1</sup> the district court may stay further proceedings in the case while the appeal is taken;<sup>2</sup> if the appeal is taken of an otherwise unappealable order which involves a controlling question of law over which substantial disagreement exists, the resolution of which might materially speed the conclusion of the litigation,<sup>3</sup> a stay of the proceedings may be granted either by the district court or the court of appeals.<sup>4</sup> However, staying proceedings pending an interlocutory appeal is the exception, not the rule as with an appeal from a final decree.<sup>5</sup>

A party who seeks to institute a maritime attachment is not required to obtain a stay or post a supersedeas bond to preserve the jurisdiction of the district court while the release of funds is being appealed.<sup>6</sup>

In an in rem action against a vessel, upon the plaintiff's failure to file a supersedeas bond, the plaintiff is not entitled to an automatic stay of proceedings.<sup>7</sup>

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Footnotes

- 1 28 U.S.C.A. § 1292(a)(3), as discussed in § 206.
- 2 *Fitzgerald v. Compania Naviera La Molinera*, 394 F. Supp. 402 (E.D. La. 1974).
- 3 28 U.S.C.A. § 1292(b).
- 4 *Fitzgerald v. Compania Naviera La Molinera*, 394 F. Supp. 402 (E.D. La. 1974).
- 5 *Fitzgerald v. Compania Naviera La Molinera*, 394 F. Supp. 402 (E.D. La. 1974).
- 6 *Stevedoring Services of America v. Ancora Transport, N.V.*, 59 F.3d 879 (9th Cir. 1995); *Centauri Shipping Ltd. v. Western Bulk Carriers KS*, 528 F. Supp. 2d 186 (S.D. N.Y. 2007).
- 7 *Eurasia Intern., Ltd. v. Holman Shipping, Inc.*, 411 F.3d 578 (5th Cir. 2005).  
As to a stay upon appeal under Fed. R. Civ. P. 62(d), see Am. Jur. 2d, Executions and Enforcement of Judgments §§ 36 to 40.

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## 2 Am. Jur. 2d Admiralty § 202

American Jurisprudence, Second Edition | May 2021 Update

### Admiralty

Jill Gustafson, J.D.

#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading

##### 10. Appeal and Review

###### a. Review of District Court Orders and Decisions in the Court of Appeals

###### (1) In General

## § 202. Scope of review

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  118.1 to 118.7(5)

The court of appeals reviews findings of fact following a bench trial in an admiralty case for clear error, construing the evidence in the light most favorable to the appellee,<sup>1</sup> and findings of law are reviewed de novo.<sup>2</sup> In reviewing a bench-tried admiralty case, the court of appeals may not find clear error if the district court's finding of fact is plausible in light of the record as a whole even if the court would have weighed the evidence differently.<sup>3</sup>

A district court's decision to vacate a maritime attachment is reviewed for abuse of discretion;<sup>4</sup> however, any legal determinations on which that discretion rests are reviewed de novo.<sup>5</sup> In reviewing an award of prejudgment interest in an admiralty case, the factual findings with respect to whether peculiar circumstances exist to deny interest are reviewable for clear error while the decision as to whether prejudgment interest should be awarded if such circumstances are found is reviewed for an abuse of discretion.<sup>6</sup>

Where there is an erroneous ruling, the claim may not be appealed where the issue is not preserved below.<sup>7</sup>

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### Footnotes

- 1                   McAllister v. U S, 348 U.S. 19, 75 S. Ct. 6, 99 L. Ed. 20 (1954); *In re Moran Towing Corp.*, 497 F.3d 375 (3d Cir. 2007); *F.C. Wheat Maritime Corp. v. U.S.*, 663 F.3d 714 (4th Cir. 2011); *Manderson v. Chet Morrison Contractors, Inc.*, 666 F.3d 373 (5th Cir. 2012); *American Mill. Co. v. Trustee of Distribution Trust*, 623 F.3d 570 (8th Cir. 2010); *Wallace v. NCL (Bahamas) Ltd.*, 733 F.3d 1093 (11th Cir. 2013), cert. denied, 134 S. Ct. 1520, 188 L. Ed. 2d 450 (2014).
- The court of appeals could not disturb the district court's determination that a boat owner's negligent operation of a boat was the proximate and substantial cause of the passenger's injuries unless it was clearly erroneous. *Doyle v. Graske*, 579 F.3d 898 (8th Cir. 2009), as amended, (Oct. 21, 2009).
- 2                   *In re Moran Towing Corp.*, 497 F.3d 375 (3d Cir. 2007); *Houston Exploration Co. v. Halliburton Energy Services, Inc.*, 269 F.3d 528 (5th Cir. 2001); *Dresdner Bank AG v. M/V OLYMPIA VOYAGER*, 463 F.3d 1233 (11th Cir. 2006).
- 3                   *Manderson v. Chet Morrison Contractors, Inc.*, 666 F.3d 373 (5th Cir. 2012).
- 4                   *Blue Whale Corp. v. Grand China Shipping Development Co., Ltd.*, 722 F.3d 488 (2d Cir. 2013); *ProShipLine Inc. v. Aspen Infrastructures Ltd.*, 609 F.3d 960 (9th Cir. 2010).
- 5                   *Blue Whale Corp. v. Grand China Shipping Development Co., Ltd.*, 722 F.3d 488 (2d Cir. 2013).
- 6                   *Probo II London v. Isla Santay MV*, 92 F.3d 361 (5th Cir. 1996).
- 7                   *Neely v. Club Med Management Services, Inc.*, 63 F.3d 166 (3d Cir. 1995); *Boudreaux v. U.S.*, 280 F.3d 461 (5th Cir. 2002).

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## 2 Am. Jur. 2d Admiralty § 203

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#### 10. Appeal and Review

##### a. Review of District Court Orders and Decisions in the Court of Appeals

##### (2) Appealable Orders

##### (a) In General

### § 203. "Useless judgment" exception to appellate jurisdiction

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  102

The court of appeals is deprived of jurisdiction by the "useless judgment" doctrine where a subsequent judgment by the court would be devoid of effect and useless to a prevailing party.<sup>1</sup> The useless judgment exception to appellate jurisdiction is narrow and will not apply to any case where the judgment will have any effect whatever.<sup>2</sup>

For example, where the district court has released a vessel, a judgment in the plaintiff's favor can serve as the basis for rearrest of the vessel at any American port, or for an in personam action against the vessel's owner, and therefore, the vessel's departure from the district court's territorial jurisdiction, after the court has vacated the arrest order, does not trigger the "useless judgment" exception.<sup>3</sup> On the other hand, where the sale of a vessel extinguishes all liens and there is nothing in the plaintiff's possession that can be regarded as the res, the useless judgment exception applies to deprive the court of appeals of jurisdiction.<sup>4</sup>

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#### Footnotes

<sup>1</sup> [Puerto Rico Ports Authority v. BARGE KATY-B](#), 427 F.3d 93 (1st Cir. 2005).

<sup>2</sup> [Atlantic Capes Fisheries, Inc. v. Gutierrez](#), 474 F. Supp. 2d 768 (E.D. N.C. 2007).



- 3                      Puerto Rico Ports Authority v. BARGE KATY-B, 427 F.3d 93 (1st Cir. 2005); Bargecarib Inc. v. Offshore  
Supply Ships Inc., 168 F.3d 227 (5th Cir. 1999).
- 4                      Eurasia Intern., Ltd. v. Holman Shipping, Inc., 411 F.3d 578 (5th Cir. 2005).

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##### 10. Appeal and Review

##### a. Review of District Court Orders and Decisions in the Court of Appeals

##### (2) Appealable Orders

##### (a) In General

## § 204. Final decisions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  102, 103

In admiralty cases, as in other civil cases, final orders of a federal district court are appealable to the court of appeals.<sup>1</sup> The collateral order doctrine, which allows review of an order which finally determines claims of right separable from, and collateral to, rights asserted in the context of a larger action, applies to admiralty cases.<sup>2</sup> A court of appeals will not be renounced of admiralty jurisdiction by the parties' acceptance of the characterization of an order as a final judgment deciding less than all claims in litigation.<sup>3</sup>

A district court's vacatur of an attachment against a vessel will not deny the court of appeals jurisdiction over the appeal where the district court's jurisdiction is proper at the time the action is commenced.<sup>4</sup> However, an appeal from an order vacating the arrest of a vessel is not a final, appealable order where a counterclaim for damages arising from the arrest remains pending before the district court.<sup>5</sup> Also, the order of a district court denying a vessel owner's motion to dismiss and to vacate a warrant of arrest is not a final, appealable decision where the denial of the motion to dismiss does not result in a judgment to execute, and while arrest of the ship could in the future be used to satisfy a judgment, the arrest itself is not an immediate precursor to execution of a judgment.<sup>6</sup>

Footnotes

- 1 28 U.S.C.A. § 1291.
- 2 [Swift & Co. Packers v. Compania Colombiana Del Caribe, S.A.](#), 339 U.S. 684, 70 S. Ct. 861, 94 L. Ed. 1206, 19 A.L.R.2d 630 (1950); [Result Shipping Co., Ltd. v. Ferruzzi Trading USA Inc.](#), 56 F.3d 394 (2d Cir. 1995).  
An order of the district court denying a vessel owner's motion to dismiss and to vacate a warrant of arrest on subject-matter jurisdiction and statute of limitations grounds in an in rem admiralty proceeding was not appealable under the collateral order doctrine where the vessel owner would be able to obtain effective review of its arguments on appeal from a final judgment. [Petroleos Mexicanos Refinacion v. M/T KING A \(EX-TBILISI\)](#), 377 F.3d 329 (3d Cir. 2004).
- 3 [Continental Cas. Co. v. Anderson Excavating & Wrecking Co.](#), 189 F.3d 512 (7th Cir. 1999).
- 4 [Hawknet, Ltd. v. Overseas Shipping Agencies](#), 590 F.3d 87 (2d Cir. 2009); [J. Lauritzen A/S v. Dashwood Shipping, Ltd.](#), 65 F.3d 139 (9th Cir. 1995).
- 5 [Puerto Rico Ports Authority v. BARGE KATY-B](#), 427 F.3d 93 (1st Cir. 2005).
- 6 [Petroleos Mexicanos Refinacion v. M/T KING A \(EX-TBILISI\)](#), 377 F.3d 329 (3d Cir. 2004).

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## 2 Am. Jur. 2d Admiralty § 205

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### IV. Admiralty Practice and Procedure

#### B. Process and Pleading

##### 10. Appeal and Review

###### a. Review of District Court Orders and Decisions in the Court of Appeals


###### (2) Appealable Orders

###### (a) In General

## § 205. Final decisions—Certification in multiple party action

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  102 to 119

The federal civil procedural rule applicable to all civil cases, which permits a decision as to one party to be certified as final for purposes of appeal by that party where other parties' claims against each other have not been finally determined,<sup>1</sup> is applicable to admiralty actions but does not override the right to appeal pursuant to statutory provisions governing appeal of interlocutory orders determining the rights and liabilities of parties.<sup>2</sup> Accordingly, certification is not a prerequisite to such an appeal of an interlocutory order<sup>3</sup> but is required if an appeal is filed as one of a final order adjudicating fewer than all of the claims of all of the parties.<sup>4</sup> In an appropriate case, the court of appeals can convert an appeal of a judgment erroneously entered pursuant to the certification rule to an interlocutory appeal.<sup>5</sup>

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### Footnotes

- <sup>1</sup> [Fed. R. Civ. P. 54\(b\)](#).  
As to the entry of judgment in cases involving multiple claims or multiple parties, generally, see [Am. Jur. 2d, Judgments §§ 1 et seq.](#)
- <sup>2</sup> [Matter of Intercontinental Properties Management, S.A.](#), 604 F.2d 254 (4th Cir. 1979).  
As to appeal from such interlocutory orders under [28 U.S.C.A. § 1292\(a\)\(3\)](#), see [§ 206](#).

- 3 Gulf Towing Co., Inc. v. Steam Tanker, Amoco, N.Y., 648 F.2d 242 (5th Cir. 1981); Walter E. Heller and  
Co. v. O/S Sonny V., 595 F.2d 968 (5th Cir. 1979).
- 4 Bailey v. Rowan Drilling Co., 441 F.2d 57, 14 Fed. R. Serv. 2d 1595 (5th Cir. 1971).
- 5 Tolson v. U.S., 732 F.2d 998 (D.C. Cir. 1984).

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##### B. Process and Pleading

##### 10. Appeal and Review

###### a. Review of District Court Orders and Decisions in the Court of Appeals


###### (2) Appealable Orders

###### (b) Interlocutory Orders

## § 206. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  [103](#), [118.2](#)

### Forms

Forms relating to interlocutory, generally, see Am. Jur. Pleading and Practice Forms, Admiralty; Federal Procedural Forms, Maritime Law and Procedure [[Westlaw® Search Query](#)]

The courts of appeal have jurisdiction of appeals from interlocutory decrees determining the rights and liabilities of the parties to admiralty cases in which appeals from final decrees are allowed;<sup>1</sup> this provides for an appeal after a determination of liability but before the assessment of damages.<sup>2</sup> There are three prerequisites to the invocation of admiralty interlocutory appellate jurisdiction: (1) the underlying case must be an admiralty case in which appeals from final decrees are allowed; (2) the appeal must be from an interlocutory order or decree of the district court; and (3) the order or decree must have determined the rights and liabilities of the parties.<sup>3</sup> The statute<sup>4</sup> is an exception to the bias against interlocutory appeals<sup>5</sup> and as such is narrowly construed and is basically limited to situations where the court determines the rights and liabilities of the parties separately from the question of damages.<sup>6</sup>

The phrase "determining the rights and liabilities of the parties" means a determination of substantive rights.<sup>7</sup> Thus, the rule does not apply to determinations that are merely procedural, tactical, or adjectival entitlements,<sup>8</sup> such as an order striking plaintiffs' class action allegations and jury demand,<sup>9</sup> or a finding of bad faith in prosecuting the arrest of a vessel.<sup>10</sup> However, it is not necessary that all issues on the merits which will have some bearing on the determination of damages be decided in order for the interlocutory order to be appealable.<sup>11</sup> The statute provides for immediate review when, because of the factual circumstances of the case, a later review might be rendered impossible.<sup>12</sup> The following decisions have been found to be appealable:

- a partial summary judgment in favor of one party<sup>13</sup>
- an order dismissing a claim for relief on the merits<sup>14</sup>
- the portion of an order vacating arrest of a vessel<sup>15</sup>
- direct and third-party claims that have been conclusively resolved by the district court even though counter- and cross-claims are still pending.<sup>16</sup>

An appellant does not compromise the right to the review of interlocutory orders<sup>17</sup> by waiting for a final judgment,<sup>18</sup> and an appealable interlocutory order may be reviewed upon appeal from the final decree even though not incorporated into the final decree by specific reference.<sup>19</sup> However, if in ruling on an appeal from an interlocutory order the court of appeals passes upon the merits of the case, a subsequent appeal of the district court's final decree can involve only matters affecting the interlocutory order subsequent to its entry.<sup>20</sup>

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#### Footnotes

- 1 28 U.S.C.A. § 1292(a)(3).  
As to the relationship of Fed. R. Civ. P. 54(b) to an appeal under 28 U.S.C.A. § 1292(a)(3), see § 205.  
As to interlocutory appeals, generally, see Am. Jur. 2d, Federal Courts §§ 1339 to 1341.
- 2 *Chem One, Ltd. v. M/V RICKMERS GENOA*, 660 F.3d 626 (2d Cir. 2011); *In re Complaint of PMD Enterprises, Inc.*, 301 F.3d 147 (3d Cir. 2002).
- 3 *Doyle v. Huntress, Inc.*, 419 F.3d 3 (1st Cir. 2005); *Chem One, Ltd. v. M/V RICKMERS GENOA*, 660 F.3d 626 (2d Cir. 2011).
- 4 28 U.S.C.A. § 1292(a)(3).
- 5 *Noble Drilling, Inc. v. Davis*, 64 F.3d 191 (5th Cir. 1995).
- 6 *Thypin Steel Co. v. Asoma Corp.*, 215 F.3d 273 (2d Cir. 2000); *Seattle First Nat. Bank v. Bluewater Partnership*, 772 F.2d 565 (9th Cir. 1985).
- 7 *Puerto Rico Ports Authority v. BARGE KATY-B*, 427 F.3d 93 (1st Cir. 2005); *Allen v. Okam Holdings, Inc.*, 116 F.3d 153 (5th Cir. 1997); *Sea Lane Bahamas Ltd. v. Europa Cruises Corp.*, 188 F.3d 1317 (11th Cir. 1999).
- 8 *Puerto Rico Ports Authority v. BARGE KATY-B*, 427 F.3d 93 (1st Cir. 2005); *Pickle v. Char Lee Seafood, Inc.*, 174 F.3d 444 (4th Cir. 1999).
- 9 *In re Complaint of Ingram Barge Co.*, 517 F.3d 246 (5th Cir. 2008) (the order did not determine the parties' substantive rights or liabilities, given that the plaintiffs could still pursue their claims individually).
- 10 *Puerto Rico Ports Authority v. BARGE KATY-B*, 427 F.3d 93 (1st Cir. 2005) (the finding of bad faith was an ancillary ruling to the determination that a barge's arrest was invalid).
- 11 *Doyle v. Huntress, Inc.*, 419 F.3d 3 (1st Cir. 2005); *Chem One, Ltd. v. M/V RICKMERS GENOA*, 660 F.3d 626 (2d Cir. 2011); *Complaint of Nautilus Motor Tanker Co., Ltd.*, 85 F.3d 105, 44 Fed. R. Evid. Serv. 667,

180 A.L.R. Fed. 677 (3d Cir. 1996); *MS Tabea Schiffahrtsgesellschaft MBH & Co. KG v. Board of Com'rs of Port of New Orleans*, 636 F.3d 161 (5th Cir. 2011).

A summary judgment order in an admiralty case was immediately appealable in its entirety, regardless of whether all of the issues raised on appeal were admiralty claims, as it was the nature of the case, rather than the claims, that controlled. *Williamson v. Recovery Ltd. Partnership*, 731 F.3d 608, 86 Fed. R. Serv. 3d 1308 (6th Cir. 2013).

12 *R.M.S. Titanic, Inc. v. Wrecked and Abandoned Vessel*, 286 F.3d 194 (4th Cir. 2002).

13 *Southwest Marine Inc. v. Danzig*, 217 F.3d 1128 (9th Cir. 2000).

14 *MS Tabea Schiffahrtsgesellschaft MBH & Co. KG v. Board of Com'rs of Port of New Orleans*, 636 F.3d 161 (5th Cir. 2011).

A motion to dismiss and to vacate a warrant of arrest on subject-matter jurisdiction and statute of limitations grounds in an in rem admiralty proceeding did not finally decide the parties' rights and liabilities and thus was not appealable. *Petroleos Mexicanos Refinacion v. M/T KING A (EX-TBILISI)*, 377 F.3d 329 (3d Cir. 2004).

15 *Puerto Rico Ports Authority v. BARGE KATY-B*, 427 F.3d 93 (1st Cir. 2005).

16 *Chem One, Ltd. v. M/V RICKMERS GENOA*, 660 F.3d 626 (2d Cir. 2011).

17 28 U.S.C.A. § 1292(a)(3).

18 *Farbwerke Hoeschst A.G. v. M/V "Don Nicky"*, 589 F.2d 795, 26 Fed. R. Serv. 2d 1316 (5th Cir. 1979).

19 *McLain Lines v. The Ann Marie Tracy*, 176 F.2d 709 (2d Cir. 1949).

20 *McLain Lines v. The Ann Marie Tracy*, 176 F.2d 709 (2d Cir. 1949).

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## 2 Am. Jur. 2d Admiralty § 207

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### IV. Admiralty Practice and Procedure

#### B. Process and Pleading

#### 10. Appeal and Review

##### a. Review of District Court Orders and Decisions in the Court of Appeals


##### (2) Appealable Orders

##### (b) Interlocutory Orders

## § 207. Certification of review of controlling question of law

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  103, 118.2

An interlocutory admiralty<sup>1</sup> order which is not otherwise appealable may be certified by the district court for appeal if there is a controlling question of law as to which there is a substantial ground for a difference of opinion, the resolution of which may materially advance the ultimate termination of the litigation.<sup>2</sup> Thus, the question of whether a tort claim in negligence exists for economic loss and damage to a vessel will not be certified for interlocutory appeal, where the issue is somewhat unique and not likely to have precedential value for a large number of cases because an interlocutory appeal will not materially advance or terminate, but instead further delay, the ultimate resolution of a protracted and expensive litigation.<sup>3</sup> In addition, a determination that a state statute providing for release from contribution and indemnity claims of defendants who enter into a good-faith settlement with a plaintiff is inapplicable to a federal maritime action and cannot be certified for an interlocutory appeal.<sup>4</sup>

A certification permitting appeal as to a controlling question of law may not be made for an interlocutory order which would otherwise be appealable under another statutory provision.<sup>5</sup>

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### Footnotes

- 1 Continental Grain Co. v. Federal Barge Lines, Inc., 268 F.2d 240 (5th Cir. 1959), judgment aff'd, 364 U.S.  
19, 80 S. Ct. 1470, 4 L. Ed. 2d 1540 (1960); Giglio v. Farrell Lines, Inc., 424 F. Supp. 927 (S.D. N.Y. 1977).  
2 28 U.S.C.A. § 1292(b).  
As to interlocutory appeals pursuant to 28 U.S.C.A. § 1292(b), generally, see Am. Jur. 2d, Federal Courts  
§ 1339.  
3 Shipping Corp. of India, Ltd. v. American Bureau of Shipping, 752 F. Supp. 173 (S.D. N.Y. 1990).  
4 Daughtry v. Diamond M Co., 693 F. Supp. 856 (C.D. Cal. 1988).  
5 Fitzgerald v. Compania Naviera La Molinera, 394 F. Supp. 402 (E.D. La. 1974).

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#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading

##### 10. Appeal and Review

##### b. Review in Supreme Court

## § 208. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  102

Review of court of appeals' decisions in admiralty cases is generally by certiorari.<sup>1</sup> On certiorari from the judgment of the court of appeals reversing a district court judgment, the Supreme Court stands, in relation to the district court's findings, in the same position as the court of appeals.<sup>2</sup> Where, on certiorari, a party argues that a federal district court erred in bifurcating the trial in the admiralty case at hand, which issue is not within the questions upon which certiorari has been granted, the United States Supreme Court will, to the extent that the party argues that the issue whether one cause of injury is a superseding cause can never be bifurcated from other issues in a trial, reject such contention and, to the extent that the party argues that the district court abused its discretion in dividing the trial in the way it did, decline to address the argument.<sup>3</sup>

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#### Footnotes

- <sup>1</sup> [The Monrosa v. Carbon Black Export, Inc.](#), 359 U.S. 180, 79 S. Ct. 710, 3 L. Ed. 2d 723 (1959); [Schulz v. Pennsylvania Railroad Company](#), 350 U.S. 523, 76 S. Ct. 608, 100 L. Ed. 668 (1956).
- <sup>2</sup> [McAllister v. U S](#), 348 U.S. 19, 75 S. Ct. 6, 99 L. Ed. 20 (1954).
- <sup>3</sup> [Exxon Co., U.S.A. v. Sofec, Inc.](#), 517 U.S. 830, 116 S. Ct. 1813, 135 L. Ed. 2d 113 (1996).

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## 2 Am. Jur. 2d Admiralty § 209

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#### IV. Admiralty Practice and Procedure

##### B. Process and Pleading

##### 10. Appeal and Review

##### b. Review in Supreme Court

### § 209. Review of state court decisions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  102

Whether a state court proceeded in an admiralty case in such a manner that the substantial rights of the parties under the controlling federal law were protected raises a federal question that may come within the scope of review of the Supreme Court of the United States.<sup>1</sup>

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#### Footnotes

<sup>1</sup> [Garrett v. Moore-McCormack Co.](#), 317 U.S. 239, 63 S. Ct. 246, 87 L. Ed. 239 (1942).

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## 2 Am. Jur. 2d Admiralty § 210

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##### B. Process and Pleading

##### 10. Appeal and Review

##### b. Review in Supreme Court

### § 210. Review by proceeding for extraordinary writ

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [Admiralty](#)  102

Although the statutory authority of the Supreme Court to issue writs of prohibition and mandamus in aid of its appellate jurisdiction<sup>1</sup> is applicable in admiralty cases, ordinarily, except in cases of public importance or of exceptional character, the Supreme Court refuses to issue a writ of mandamus or prohibition to a district court but will leave the applicant to pursue his or her remedies in the proper court of appeals.<sup>2</sup> The Supreme Court may issue a writ of prohibition to forbid a district court to proceed in an admiralty suit in which it clearly lacks jurisdiction,<sup>3</sup> but if the claim is within admiralty jurisdiction,<sup>4</sup> or if the question of admiralty jurisdiction is a close one,<sup>5</sup> a writ of mandamus or prohibition should not be issued and the sole remedy for review of the district court decision is a direct appeal to the court of appeals.<sup>6</sup>

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#### Footnotes

- 1 28 U.S.C.A. § 1651.
- 2 [Ex parte Republic of Peru](#), 318 U.S. 578, 63 S. Ct. 793, 87 L. Ed. 1014 (1943).
- 3 [U.S. v. Peters](#), 3 U.S. 121, 3 Dall. 121, 1 L. Ed. 535, 1795 WL 827 (1795).
- 4 [Hagar, Ex parte](#), 104 U.S. 520, 26 L. Ed. 816, 1881 WL 19903 (1881).
- 5 [U.S. v. Byers](#), 144 F.2d 455 (C.C.A. 2d Cir. 1944).
- 6 [In re Transportes Maritimos do Estado](#), 264 U.S. 105, 44 S. Ct. 236, 68 L. Ed. 580 (1924).

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